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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

THE NATIONAL RIFLE ASSOCIATION OF AMERICA, NEAL KNOX, WILLIAM B. BINSWANGER, WARREN CASSIDY, THE NATIONAL RIFLE ASSOCIATION POLITICAL VICTORY FUND, AND MICHAEL MCCABE,
Petitioners,

v.

MINNESOTA STATE ETHICAL PRACTICES BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the federal courts have subject matter jurisdiction over a case initially filed in state court and alleging only violations of state law.

2. Whether the First Amendment's guarantees of freedom of the press, speech, and association are abridged by a state statute that requires a national membership organization, when communicating only with its members concerning candidates in a state election, to register with the state, to report the costs of such mailings, and to disclose the names, addresses, and employers of certain classes of dues-paying members.

3. Whether the First Amendment's guarantees of freedom of press, speech, and association, as well as the right to petition the Government for redress of grievances, are abridged by a state statute that requires a national membership organization, when urging only its members to communicate with elected state officials, to register with the state and report its activities to the state.

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OPINIONS BELOW

The opinion of the Court of Appeals (App. B) is reported at 761 F.2d 509 (1985). The order denying rehearing (App. A) is not reported. The opinion of the District Court is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 14, 1985; a timely petition for rehearing, with suggestion for rehearing *en banc*, was initially denied on August 9, 1985. On August 16, 1985, the Court of Ap-

peals amended the denial order, to indicate that three judges dissented from the denial. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I provides in part:

"Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Amendment XIV provides in part: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . ."

STATUTES INVOLVED

Minnesota Ethics in Government Act, *Minn. Stat.* 10A.01 *et seq.*

10A.01 Definitions:

Subd. 11. "Lobbyist" means any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

• • • •

Subd. 16. "Political fund" means any accumulation of dues or voluntary donations by an association other than a political committee, which accumulation is collected or expended for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

10A.12 Political Funds:

Subd. 5. [A]ny association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Pursuant to section 10A.20, the treasurer of t. fund shall disclose the name of any member whose dues, membership fees and contributions deposited in the political fund together exceed $50 in any one year.

10A.20 Campaign Reports:

Subd. 1. The treasurer of every committee and political fund shall begin to file the reports required by this section in the first year it receives contributions or makes expenditures in excess of $100 and shall continue to file until the committee or fund is terminated.

• • • •

Subd. 3. Each report under this section shall disclose:

• • • •

(b) The name, address and employer, or occupation if self-employed, of each individual, political committee or political fund who within the year has made one or more transfers or donations in kind to the political committee or political fund, including the purchase of tickets for all fund-raising efforts, which in aggregate exceed $50 for legislative candidates or $100 for statewide candidates or ballot questions, together with the amount and date of each transfer or donation in kind, and the aggregate amount of transfers and donations in kind within the year from each source so disclosed. A donation in kind

shall be disclosed at its fair-market value. An approved expenditure is listed as a donation in kind. A donation in kind is considered consumed in the reporting period in which it is received. The names of contributors shall be listed in alphabetical order;

(c) The sum of contributions to the political committee or political fund during the reporting period;

* * * *

(h) The sum of all expenditures made by or on behalf of the political committee or political fund during the reporting period;

STATEMENT OF THE CASE

Parties

The Minnesota State Ethical Practices Board (MEPB) is a state agency created pursuant to the Minnesota Ethics in Government Act, *Minn. Stat.* 10A.01 *et seq.* and assigned the responsibility of enforcing that Act. The National Rifle Association (NRA) is an incorporated, not-for-profit membership organization of approximately three million members. The National Rifle Association Institute for Legislative Action (NRA-ILA) is an operating division of the NRA, primarily concerned with the legislative and political activities of the Assocation. The National Rifle Association Political Victory Fund (NRA-PVF) is the separate, segregated fund of the NRA, as that term is defined by the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.*

Neal Knox was the Executive Director of NRA-ILA and Chairman of the NRA-PVF from January 12, 1978 to April 15, 1982. Warren Cassidy has been the Executive Director of NRA-ILA and Chairman of the NRA-PVF since April 15, 1982. William B. Binswanger is the treasurer of the NRA. Michael McCabe was the treasurer of the NRA-PVF from April 15, 1982 until July 30, 1985.

Facts

On March 31, April 8, and April 24 of 1981, the NRA sent letters to NRA members residing in Minnesota expressly encouraging them to call and/or write their state senators concerning proposed legislation.

On October 13, November 2, and December 17 of 1981, the MEPB notified Mr. Knox that it had determined that these letters "urging others to communicate" with state legislators constituted "lobbying" as defined in *Minn. Stat.* 10A.01. The MEPB requested Mr. Knox, as signator of the letters, to register as a lobbyist and report all such lobbying activities to it. Mr. Knox did not file the requested lobbyist registration form or activities report in response to MEPB's notification.

On October 13, 1980 and on January 20, 1981, the NRA-PVF, chaired by Mr. Knox, contributed $4,950 to the Minnesota Gun Owner Political Victory Fund, a Minnesota state and federal political action committee.

In August and September of 1982 the NRA, through its political/legislative division, NRA-ILA, sent letters to NRA members residing in Minnesota concerning a candidate running in the state primary election for governor. These letters specifically urged NRA members to vote against Mr. Warren Spannaus based on his views on the right to keep and bear arms issue.

In October of 1982, the NRA sent Political Preference Charts to NRA members residing in Minnesota. These charts assigned grades to candidates in Minnesota state elections, which were determined by evaluating the candidates' voting record, legislative proposals, and campaign speeches on the right to keep and bear arms issue.

On October 8, 1982, the MEPB filed suit against the NRA, Neal Knox, William Binswanger, and Warren Cassidy in the District Court for Ramsey County. The complaint alleged that: 1) by virtue of the written communications to its members concerning proposed legisla-

tion, the NRA had a statutory duty to register as "lobbyist"; 2) by virtue of a cash contribution of $4,950 made by NRA to MGO-PVF in 1980 and 1982, the NRA had a statutory duty to register as a "political fund" and to file reports of receipts and expenditures;[1] and 3) by virtue of expenditures made in communicating with its members concerning the 1982 primary election for governor, the NRA had a statutory duty to register as a "political fund" and to file reports of receipts and expenditures.

On November 8, 1982, the NRA filed a petition for removal to the U.S. District Court for the District of Minnesota. A motion to remand to the state court was filed by the MEPB on November 15, 1982. Also on November 15, 1982, the NRA moved, under Rule 12(b)(1), (2), (3), (4), (5), and (6) of the Federal Rules of Civil Procedure, for dismissal of the action in the U.S. District Court. This dismissal motion was denied on February 22, 1983 by Judge Miles Lord who also held that the U.S. District Court had jurisdiction, thereby granting the NRA's petition for removal and denying the MEPB's motion to remand.

In May, 1983 the MEPB filed an amended complaint in the U.S. District Court, which added as defendants NRA-PVF and its treasurer Michael K. McCabe, alleging that the NRA-PVF had caused expenditures to be made in the 1982 primary election without registering as a "political fund" and without reporting receipts and expenditures.

On February 13th and 15th, 1984, trial was held before Judge Lord. On May 2, 1984, Judge Lord, in an order for judgment, found that the mailings by the NRA to its members on March 31, April 8, and April 24 of 1981 constituted "lobbying" within the meaning of *Minn.*

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[1] This allegation was factually incorrect. The $4,950 contributions were made to the MGO-PVF by NRA-PVF.

Stat. § 10A.01 and that neither Minnesota law nor the First or Fourteenth Amendment to the U.S. Constitution prohibited the State of Minnesota from requiring registration and reporting of those activities. Judge Lord ordered Mr. Knox to register as a "lobbyist" and to report all "lobbying" activities conducted by him, including mailings to NRA members in Minnesota, and declared that any communication by NRA to NRA members in Minnesota which urges such persons to communicate with public officials in Minnesota for the purpose of attempting to influence legislative action constitutes "lobbying" and triggers the registration and reporting requirements. Mr. Knox, therefore, filed a lobbyist registration and disbursement form in September, 1984. The disbursement form revealed a $11,214.95 expenditure by the NRA urging its members to communicate with state legislators.

Judge Lord also decided that the NRA was a "political fund" within the meaning of *Minn. Stat.* 10A.01 by virtue of its expenditure of money for mailings to members which concerned the 1982 primary election for governor and for the mailing of the political preference charts to NRA members in Minnesota. The court ordered the NRA to register as a "political fund" and to report its receipts and expenditures. Judge Lord also held that the NRA-PVF had acted as a "political fund" within the meaning of *Minn-Stat.* 10A.01(16) by virtue of its cash contributions to the MGO-PVF.[2]

On May 24, 1984, NRA appeared before Judge Lord to request a stay pending appeal to the Court of Appeals for the Eighth Circuit as to the portions of his order which concerned the NRA's "political fund" report. This report would, in effect, make public the names, addresses, and employers of all NRA members who had paid over $50 to the NRA in 1982. Judge Lord denied this request.

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[2] This final holding concerning the NRA-PVF was not appealed to the Court of Appeals and is not an issue before this Court.

On May 30, 1984, NRA appealed, as of right, under Rule 4 of the Federal Rules of Appellate Procedure, to the Court of Appeals. NRA also filed a separate motion with the Court of Appeals to stay Judge Lord's order of May 2, 1984, pending appeal. The Court of Appeals denied the motion for a stay on July 23, 1984, without opinion. On September 25, 1984, NRA appeared before Judge Lord in response to a contempt motion relating only to the disclosures of the names, addresses, and employers of NRA members who gave NRA more than $50. Judge Lord issued an order on September 28, 1984, requiring NRA to reveal "within ten days, to the State of Minnesota" the names, addresses and employers of all members who gave more than $50.

An application for a stay of mandate, addressed to Associate Justice Harry A. Blackman, Circuit Justice for the Eighth Circuit, was filed by NRA on October 17, 1984; it was denied on October 26, 1984. An application for a stay of mandate addressed to the Chief Justice for referral to the Supreme Court was denied on November 13, 1984. The NRA, therefore, complied with the District Court's order of September, 1984, revealing the names, addresses, and employers of more than 20,000 members. It reported total expenditures in Minnesota for communicating with members concerning state elections in 1982 as $23,256. Total receipts for that year were over $50,000,000.

On May 15, 1985, the U.S. Court of Appeals for the Eighth Circuit affirmed the judgment of the District Court. The Court of Appeals rejected NRA's contentions that portions of the Minnesota lobbying and election statute, as applied to the activities of the NRA, inhibited its exercise of First Amendment rights, specifically speech, press, association, and the right to petition, without serving a compelling state interest. The Court of Appeals reasoned that the state interests outlined in *U.S. v. Harris*, 347 U.S. 612 (1954) and *Buckley v. Valeo*, 424 U.S.

1 (1976) were dispositive of the issues. On August 16, 1985, the Court of Appeals denied a timely filed petition for rehearing and suggestion for rehearing *en banc*, with three judges dissenting.

REASONS FOR GRANTING THE PETITION

I. THE DISTRICT COURT DID NOT HAVE SUBJECT-MATTER JURISDICTION

Subsequent to the determination of the District Court that it had subject matter jurisdiction in the instant case, this Court decided *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 103 S.Ct. 2841 (1983). In that case, this Court determined the circumstances under which a federal district court had jurisdiction over a civil action removed from a state court pursuant to 28 U.S.C. 1441, holding that:

> Congress has given the lower federal courts jurisdiction to hear . . . only those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law. 463 U.S. at 27-28, 103 S.Ct. at 2856.

In the instant case, the complaint, initially filed in state court, alleged that the NRA had violated Minnesota law. The complaint was filed pursuant to *Minn. Stat.* 10A.34 which expressly authorizes such complaints and creates subject-matter jurisdiction for such complaints in the Ramsey County, Minnesota District Court. The complaint, while noting that NRA might raise the First and Fourteenth Amendments to the U.S. Constitution as a defense (Complaint ¶ 14), did not, however, establish "that its right to relief under [Minnesota] law requires resolution of a substantial question of federal law in dispute between the parties." 463 U.S. at 13, 103 S.Ct. at 2848.

Franchise Tax Board also held that:

> a case may not be removed to federal court on the basis of a federal defense, including the defense of preemption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case. 463 U.S. at 14, 103 S.Ct. at 2848.

In the instant case, two federal defenses were raised: 1) preemption by the Federal Election Campaign Act, as amended, 2 U.S.C. 431 *et seq.*, as to the count of the complaint relating to the $4,950 contribution by the NRA-PVF to the MGO-PVF [3] and 2) the guarantees of the First and Fourteenth Amendments as to the counts of the complaint relating to "lobbying" reporting and registration and as to the counts relating to the determination that NRA was a "political fund."

As can be seen from the complaint, the latter federal defenses were anticipated by the MEPB. Moreover, as is plain from the Court of Appeals decision, the parties effectively agreed that the applicability of the First and Fourteenth Amendments was the only question truly at issue in the case. As a consequence, this case falls squarely into the principles expressed by *Franchise Tax Board*, thereby mandating the conclusion that the District Court herein plainly lacked subject-matter jurisdiction and that the MEPB's motion to remand should have been granted.

A discussion of the applicability of *Franchise Tax Board* to the instant case is not complete without noting that two factors distinguish the instant case from *Franchise Tax Board*. First, in *Franchise Tax Board*, the plaintiff, after having been denied remand to the state court in which it had initially filed its complaint, raised

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[3] As noted in footnote 2, *supra*, NRA-PVF complied with the District Court's order regarding reporting and did not appeal that order to the Court of Appeals.

the issue of subject-matter jurisdiction in the Court of Appeals when the defendant appealed after having lost on the merits. The plaintiff also renewed its argument that the District Court lacked subject matter jurisdiction when it petitioned the Court of Appeals for rehearing. 463 U.S. at 7, 103 S.Ct. at 2845. By contrast, in the instant case, while the plaintiff (MEPB) moved the District Court to remand the case to state court, it did not appeal the District Court's denial of the motion to remand nor did it raise that issue of subject-matter jurisdiction when the defendant (NRA) petitioned the Court of Appeals for rehearing.

Second, it is not MEPB (the plaintiff herein), as it was in *Franchise Tax Board*, who is raising the question of lack of subject matter jurisdiction; rather, it is NRA—upon whose motion the case was removed to federal court —who now raises lack of subject-matter jurisdiction.

Neither factor, however, should cause this Court to hesitate to hold that the District Court in the instant lacked subject-matter jurisdiction. It is well-settled that the jurisdiction of the lower federal courts is "limited to those subjects encompassed within a statutory grant of jurisdiction." *Insurance Corp. v. Campagnie Des Bauxites*, 456 U.S. 694, 701 (1982). Consequently,

> *no* action of the parties can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant (citation omitted), principles of estoppel do not apply (citation omitted), and a party does not waive the requirement by failing to challenge jurisdiction early in the proceedings. (emphasis added) Id. at 702.

By not challenging jurisdiction in the Court of Appeals, MEPB, in effect, consented to the jurisdiction of the federal courts; such consent, however, did not give the Court of Appeals jurisdiction. Moreover, the fact that NRA was the party which intitiated the removal to the District

Court from the state court does not now prevent it from challenging jurisdiction at this point in the proceedings, both because "principles of estoppel do not apply" to questions of subject-matter jurisdiction and because, if NRA was prevented from challenging subject-matter jurisdiction at this stage in the proceedings, it would be tantamount to allowing the parties to agree to confer subject-matter jurisdiction.

Accordingly, to comply with the principles expressed in *Franchise Tax Board* and *Insurance Corp.*, this Court should, as it did in *Franchise Tax Board*, "vacate the judgment of the Court of Appeals and remand so that this case may be remanded to the" (463 U.S. at 28, 103 S.Ct. at 2856) District Court for Ramsey County.

II. THE COURT OF APPEALS DECISION IS IN CONFLICT WITH THE DECISION OF THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA IN *BUCKLEY v. VALEO*, 519 F.2d 821 (D.C.Cir. 1975)

To resolve a conflict between two circuits, this Court should grant review of the Eighth Circuit's decision holding constitutional a state statute which, in its application, abridges the First Amendment's guarantees of freedom of speech, press, and association by requiring a membership organization which communicates with its members concerning candidates for state office to register as a "political fund," to report the costs of such mailings, and to disclose names, addresses, and employers of certain classes of dues-paying members.

In holding constitutional the application of *Minn. Stat.* 10A.01(16) to the NRA when it sends communications to its members concerning candidates for state elective office, the Eighth Circuit's decision is in direct conflict with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Buckley v. Valeo*, 519 F.2d 817 (D.C. Cir. 1975), *aff'd in part, rev'd in part*, 424 U.S. 1 (1976).

In *Buckley*, the Court of Appeals, in its review of the Federal Election Campaign Act, held unconstitutional Section 437a [4] which required:

> any person (other than individual) who expends any funds or commits any act directed to the public for the purpose of influencing the outcome of an election, or who publishes or broadcasts to the public any material referring to a candidate . . . advocating the election or defeat of such candidate . . . shall file reports with the Commission as if such person were a political committee. The reports filed by such person shall set forth the source of funds used in carrying out any activity . . . in the same detail as if the funds were contributions . . .

In an extensive discussion of the constitutionality of § 437a, the Court of Appeals closely analyzed this disclosure provision in light of this Court's holdings in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958) and *Bates v. Little Rock*, 361 U.S. 516 (1960), concluding that the challenged section could not withstand constitutional scrutiny.

Among the reasons the Court of Appeals in *Buckley* invalidated § 437a was its inclusion of organizations which communicated only with its members. While the Court of Appeals noted that portions of the legislative history indicated that "issuing communications directly to its members" (519 F.2d at 877, n.140) was not reached by § 437a, the Court of Appeals observed that "disagreement" had been expressed with this view of § 437a and concluded that § 437a *was* broad enough to encompass such communication.[5] The Court of Appeals in the instant

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[4] The Court of Appeals ruling that § 437a was not constitutional was not appealed to this Court. *Buckley v. Valeo*, 424 U.S. 1, 61 n.70 (1976). The disclosure provisions of the Federal Election Campaign Act which were reviewed by this Court in *Buckley* were held to be constitutional. 424 U.S. at 66-68.

[5] The Court of Appeals observed that, under the "bona fide publications" exemption for § 437a, "a publication is not "bona fide" if

case, however, also construing a statute with the reach of § 437a, held that the state *could* constitutionally compel disclosure of communications to members based upon its reading of this Court's rulings in *NAACP v. Alabama ex rel. Patterson*, *Bates v. Little Rock*,[6] and *Buckley*.

In addition, the disclosure requirements held constitutional by the Court of Appeals in *Buckley*, and subsequently by this Court, were not similar to that in the instant case in that the Government in *Buckley* had demonstrated "a substantial and legitimate interest in protecting the integrity of its elections." *Buckley*, 519 F.2d at 872; *Buckley*, 424 U.S. at 67, 68.

This Court in *Buckley* cited three compelling governmental interests which would justify mandating disclosure: providing the electorate with information as to where "political campaign *money* comes from and how it is *spent by the candidate*." (emphasis added) *Buckley*, 424 U.S. at 66; ". . . deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. . ." *Buckley*, 424 U.S. at 67[7]; and, as an "essential means of

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it is primarily for distribution to individuals affiliated by membership . . . with the [group] distributing it . . . ." 519 F.2d at 872. It plainly drew from the language of this exemption the fact that the application of § 437a to communications "to the public" encompassed communications to members.

[6] In its opinion, the Court of Appeals in the instant case failed to take any account of *Minn. Stat.* 10A.265 which states "Nothing in Chapter 10A shall be construed as abridging the right of an association to communicate with its members" and which was clearly placed in the law, albeit inartfully, to keep *Minn. Stat.* 10A.01(11) and 10A.01(16) within constitutional bounds.

[7] *Buckley*'s use of the term "expenditure" does not mean simply the spending of money; rather, it is a term of art in the FECA and relates to the spending of money to support a candidate *in coordination with* the candidate. See 2 USC 441b(b)(2).

gathering the data necessary to detect violations of the contribution limitations. . ." *Buckley*, 424 U.S. at 68.

Contrary to the conclusion of the Court of Appeals in the instant case (App. B, at 8a), none of these three governmental interests are served by requiring disclosure in the case at hand. Indeed, there is "a fundamental constitutional difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to the candidate to be spent on his campaign." *FEC v. NCPAC*, —— U.S. ——, ——, 105 S.Ct. 1459, 1469 (1985). Disclosing the cost of sending letters to NRA members and the names, addresses, and employers of NRA members who have paid $50 or more will clearly not provide information as to where political campaign money came from or how it is spent by the candidate since no money is given to the candidate. Similarly, the disclosure sought here does not "deter actual corruption" by exposing large contributions and expenditures to publicity as no contributions or expenditures have been made by sending communications to members.[8] Finally, in no way does disclosure help Minnesota authorities detect violations of contribution limitations, since again, no contributions are being made by sending communications to members.[9]

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[8] "Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of *financial gain to themselves or infusions of money into their campaigns. The hallmark of corruption is the financial quid pro quo*: dollars for political favors. (emphasis added) *FEC v. NCPAC*, —— U.S. at ——, 105 S.Ct. at 1469.

[9] In comparing the disclosure provisions upheld by the Court of Appeals in *Buckley*, and subsequently by this Court to the provisions of Minnesota law at issue herein, the Court of Appeals in the instant case compared very differing provisions since the disclosure provisions upheld in *Buckley* dealt with monies used to support a candidate either by contributing to his campaign or by spending money in coordination with his campaign. Thus, the provisions upheld in *Buckley* are similar to those required for a "political

The absence of a compelling governmental interest for *Minn. Stat.* 10A.12 and 10A.20, as applied to NRA's activities, is compounded by the intrusion into associational rights that a required disclosure of the costs of intra-associational communications and the names, addresses, and employers of members may have upon such an organization's membership. As this Court observed in *NAACP v. Alabama ex rel. Patterson*, "Inviolability of privacy in group association may in many circumstances be indispensible to preservation of freedom of association. . . ." 357 U.S. at 462. Moreover, because the right to associate "is diluted if it does not include the right to pool money through contributions, . . . the invasion of privacy of belief may be as great when the information sought concerns the giving and spending of money as when it concerns the joining of organizations. . ." *Buckley*, 424 U.S. at 65-66.[10]

Finally, § 437a was found by the Court of Appeals to activate disclosure without any expending of funds whatsoever. *Minn. Stat.* 10A.01(16) suffers the same infirmity since it includes "any accumulation of dues . . . which *accumulation is collected* or expended for the purpose of influencing the nomination or election of a candidate . . . ." (emphasis added). These similarities

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committee" as defined in *Minn. Stat.* 10A.01(15). As a result, it is § 437a and *Minn. Stat.* 10A.12 and 10A.20—to which NRA is subject as a result of being held to be a "political fund" under *Minn. Stat.* 10A.01(16)—which are similar in their application and effect since they both demand information where the "nexus may be far more tenuous" (*Buckley*, 519 F.2d at 872) than that held constitutional in *Buckley*.

[10] Notably, *Minn. Stat.* 10A.12, as interpreted by MEPB, requires a "political fund" to reveal the names, addresses, and employers of NRA members whose dues payments exceed $50, whereas a "political committee" (*Minn. Stat.* 10A.01(15)), to which contributions are given *only* for political purposes, is only required to disclose the names, addresses, and employers of those who contribute in excess of $100 for use in making contributions to candidates.

would indicate that the Minnesota laws in question offend the First Amendment to an even greater extent than § 437a.

There is a need for this Court to resolve this conflict between the courts of appeals, not only because of the existence of actual conflict but because of the need to resolve the important question of the degree to which the First Amendment right to associate protects the interests of membership organizations in the area of election law.[11] As the facts of this case highlight the inter-circuit conflict and present a clear opportunity to resolve the potential impact upon the First Amendment freedoms of association and speech which result from statutes such as *Minn. Stat.* 10A.12 and 10.20, this Court should review the instant case so that the statute may be held unconstitutional "or [be] authoritatively construed to [proscribe] only unprotected speech and not be susceptible of application to protected expression." *Buckley, supra*, 519 F.2d at 875, quoting *Gooding v. Wilson*, 405 U.S. 518, 522 (1972).

III. THIS COURT HAS NOT RESOLVED WHETHER COMMUNICATIONS TO MEMBERS OF A MEMBERSHIP ORGANIZATION URGING THEM TO COMMUNICATE WITH THEIR ELECTED REPRESENTATIVES ARE PROTECTED BY THE FIRST AMENDMENT

This Court should grant review of the Eighth Circuit's decision to settle an important matter of federal constitutional law since the Court of Appeals held constitutional a state statute which, as applied in this case, requires a membership organization that urges its members to communicate with elected public officials for the

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[11] Only 18 states expressly exempt communications to members from the definition of contribution. Appendix D lists the states and summarizes the laws excluding communications to members from the definition of contribution/expenditure. Thus, it is possible for NRA and others similarly situated to be convicted in 32 states.

purpose of attempting to influence legislation, to register with the state as a "lobbyist," to report communication costs, and to disclose the names, addresses and employers of certain classes of members from whom contributions were received.

The uncertainty surrounding this area of the law results from this Court's interpretation of a federal lobbying statute in *United States v. Harriss*, 347 U.S. 612 (1954),[12] relied upon by the Eighth Circuit in its erroneous decision in the instant case.

In *Harriss*, this Court reviewed a constitutional attack on the Federal Regulation of Lobbying Act, 2 U.S.C. 261-270. The federal statute, like the provisions of the Minnesota Ethics in Government Act at issue herein, required periodic financial reports from lobbyists and their clients. The defendants in *Harriss* allegedly violated the statute by not reporting two types of expenditures, including "the costs of a campaign to induce various interested groups and individuals" of the general public "to communicate by letter with members of Congress on such legislation." 347 U.S. at 615. This activity was referred to as "an artificially stimulated letter campaign." 347 U.S. at 617.

The statute was challenged on grounds that it was so vague and indefinite that it violated both due process

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[12] The potential for recurring litigation is evidenced by the current state lobbying laws compiled in Appendix E. Several states employ equivocal terms in the statutes dealing with lobbying activities. If the words "direct communication" are given their plain meaning, that is, one-on-one communication with legislators by the employee of the lobbyist organization, then twenty state lobbying statutes can be characterized as including only one-on-one communication with legislators as "lobbying." Eleven state lobbying statutes specifically include urging others to communicate with officials in the definition of "lobbying;" twenty more state lobbying statutes can be characterized as including as "lobbying" one-on-one communication with legislators as well as urging others to do so.

and First Amendment guarantees of freedom of speech and press, as well as the right to petition the government for redress of grievances. Although the constitutionality of the Act was upheld, to do so this Court severely limited its application by narrowly construing several of its substantive provisions.

In construing the Act's coverage, this Court outlined several prerequisites which a person must meet before the Act was applicable, including "the intended method of accomplishing this purpose [influencing the passage or defeat of legislation] must have been through direct communications with Congress." *Harriss*, at 623.

It is in interpreting what this Court meant by "direct communication with Congress" that has given rise to the unsettled nature of the law in this area. In *Harriss*, this Court defined "direct communication" as "direct pressures, exerted by the lobbyists themselves or through their hirelings or through an artificially stimulated letter campaign." *Harriss*, at 620. This Court, however, also discussed its opinion in an earlier decision, *United States v. Rumely*, 345 U.S. 41 (1953) (invalidating a contempt citation issued by House of Representatives when defendant refused to disclose the names of those who had purchased books from organization of which he was secretary), where language similar to that of *Minn. Stat.* 10A.01(11) was held to encompass only "representations made *directly* to the Congress, its members or its committees." (emphasis added) *Rumely*, at 47. It is unclear, therefore, whether even letter writing campaigns to the public may be constitutionally included within the range of lobbying activities subject to regulation. More importantly, *Harriss* does not, as believed by the Court of Appeals,[13] conclusively establish that construction of

[13] The Court of Appeals held that this Court "ruled that the Lobbying Act applied to the form of lobbying used in this case, namely, communication with lawmakers through an artificially stimulated letter campaign." App. B, at 7a.

the Act to include intra-association communications designed to generate letters about legislation would not render the law unconstitutionally overbroad since the letter campaign at issue in *Harriss* was not limited to letters to the membership of a voluntary membership organization by the organization. This Court thereby limited its analysis of the Act to its impact on freedom of speech. Freedom of association, a wholly distinct liberty, is nowhere mentioned.[14]

Harriss also does not settle the law regarding persons who receive money which is *not* to be used principally to aid in influencing the passage or defeat of legislation or persons whose principle purpose is *not* such influencing. Rather, *Harriss* only concluded that the Federal Lobbying Act was constitutional after noting that the Act only applied to persons who receive money which is principally to aid in influencing the passage or defeat of legislation and persons whose principle purpose is such influencing. Yet this factor the Court of Appeals failed to make part of its analysis of *Minn. Stat.* 10A.01(11) as applied to the NRA.

This Court's decisions specifically dealing with freedom of association do not fill the void left by *Harriss.* While these decisions clearly establish that "state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny" (*NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-61 (1958)), neither *NAACP v. Alabama* nor *Bates v. City of Little Rock*, 361 U.S. 516 (1960) dealt with associational rights in the context of lobbying regulation. Thus, in the area

[14] It should be noted, however, that because *Harriss* was plainly based upon this Court's earlier decision in *Rumely*, which involved communications (sale of books) by an organization to individuals who paid the organization for those communications—precisely the same situation as exists with communications to members by a membership organization—*Harriss* seems to accept that intra-associational communications, even if they involve legislative matters, are constitutionally protected.

where First Amendment associational rights overlap with First Amendment freedoms of speech and press, and the right to petition the government, this Court has yet to settle the law.[15]

In its opinion, the Eighth Circuit cites the unmasking of artificial legislative pressure as the compelling governmental interest outlined by this Court in *Harriss* as saving the Federal Lobbying Act from unconstitutionality. Communications to members concerning legislation, and the resulting letters of members to legislators, are not, however, the pressures referred to in *Harriss* since such communications do not threaten the integrity of the legislative process in the same way as do face-to-face communications by individuals who represent the interests of others; rather, since communications to members are to those who, by joining the Association, are seeking to be kept informed, such communications *enhance* the democratic legislative process and the members' exercise of their First Amendment rights by keeping the members informed on issues important to them. Members are thus able, as constituents of their legislators, to contact their legislators to voice their personal views on legislative matters.[16]

The grave constitutional questions left open by *Harriss* and *NAACP v. Alabama* are matters properly to be de-

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[15] The Supreme Court of Montana, relying on *Harris*, has rendered a decision in direct conflict with the Court of Appeals. In *Montana Auto Association v. Greely*, 632 P.2d 300 (1981), the Montana Supreme Court unanimously struck down subsection (b) of section 2(8) of the Montana lobbyist disclosure initiative which required registration of organizations which solicit lobbying activities of others.

[16] When reduced to its essentials, what is regulated by *Minn. Stat.* 10A.01(11), as applied to the activities of the NRA, is indistinguishable from one person writing a letter to another to express his views on legislation or indistinguishable from a person subscribing to a magazine or a newspaper to be kept informed of legislative matters. Plainly, such conduct cannot be regulated without impairing the most fundamental guarantees of the First Amendment.

cided by this Court.[17] Because this case involves the purest form of associational activity, it presents this Court with the appropriate vehicle to settle these questions. To leave this area in its present state is to invite states to enact laws abridging on these preferred rights of speech, press, petition, and association. These statutes carry the seeds of constitutional controversary that will have far-reaching importance if left unresolved by this Court.

CONCLUSION

So that this Court may vacate the judgment of the Court of Appeals for lack of subject-matter jurisdiction and remand the case, this Court should grant this petition. If this Court determines that the lower courts had subject-matter jurisdiction, to resolve the conflict between the Eighth and District of Columbia Circuits, as well as settle an important question of federal constitutional law, this Court should review the decision of the Eighth Circuit in this case.

Respectfully submitted,

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* Counsel of Record

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[17] Congress has recognized that *Harris* and *NAACP v. Alabama* have left a void in the law. In reviewing this Court's decisions in attempting to explain the power of Congress to regulate "grassroots" lobbying campaigns, the Congressional Research Service observed "There are gray areas within the statutory language [of the Federal Regulation of Lobbying Act], as interpreted by the Supreme Court, concerning the coverage of the law extending to activities that involve indirect or 'grassroots' lobbying campaigns. . . ." "Coverage Under the Federal Regulation of Lobbying Act" (Congressional Research Service, June 22, 1981), at 2.

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 84-5101-MN

MINNESOTA STATE ETHICAL PRACTICES BOARD,
Appellee,

vs.

THE NATIONAL RIFLE ASSOCIATION OF AMERICA, *et al.*,
Appellants.

Appeal from the United States District Court
for the District of Minnesota

AMENDED ORDER

Appellants' petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

Judges Donald R. Ross, Theodore McMillian and Richard S. Arnold would have granted the petition.

August 16, 1985

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-5101

MINNESOTA STATE ETHICAL PRACTICES BOARD,
Appellee,

v.

THE NATIONAL RIFLE ASSOCIATION OF AMERICA, NEAL KNOX, WILLIAM B. BINSWANGER, WARREN CASSIDY, THE NATIONAL RIFLE ASSOCIATION POLITICAL VICTORY FUND and MICHAEL MCCABE,
Appellants.

Appeal from the United States District Court
for the District of Minnesota

Submitted: December 13, 1984

Filed: May 14, 1985

Before LAY, Chief Judge, BRIGHT and BOWMAN, Circuit Judges.

PER CURIAM.

The National Rifle Association (NRA), the National Rifle Association Political Victory Fund (NRA-PVF), a federal political action committee, and certain individuals

employed by the two organizations appeal from a judgment of the district court[1] requiring them to register their lobbying and political funding activities pursuant to the Minnesota Ethics in Government Act (the Act), Minn. Stat. §§ 10A.01-.34 (1984). For reversal, the appellants argue that the Act violates the United States Constitution in that (1) it unduly abridges their first amendment right of association, and (2) it denies them equal protection of the law. We reject these arguments and affirm the district court's order.

I. BACKGROUND

This appeal concerns two separate activities regulated by the Act: lobbying and political funding. The Act defines a "lobbyist" as follows:

> "Lobbyist" means any individual:
>
> (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or
>
> (b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.
>
> "Lobbyist" does not include any:
>
> (a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

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[1] The Honorable Miles W. Lord, Chief Judge, United States District Court for the District of Minnesota.

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony;

(f) Stockholder of a family farm corporation as defined in section 500.24, subdivision 1, who does not spend over $250, excluding his own travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Minn. Stat. § 10A.01 subd. 11. Persons defined as "lobbyists" must file registration forms and make regular reports of their lobbying activities. Minn. Stat. § 10A.03, 10A.04.

The Act also defines the term "political fund: [A]ny accumulation of dues or voluntary contributions by an association other than a political committee, which accumulation is collected or expended for the purpose of influencing the nominations or election of a candidate * * *." Minn. Stat. § 10A.01 subd. 16. Like lobbyists, political

funds are required to register and file regular reports. Minn. Stat. §§ 10A.14, 10A.20.

Appellant Neal Knox is the executive director of the National Rifle Association Institute for Legislative Affairs (NRA-ILA), located in Washington, D.C. The NRA-ILA is the lobbying division of the NRA. During March and April of 1981, Knox sent three letters and one mailgram from Washington to all members of the NRA in Minnesota (approximately 54,000 persons), urging them to contact their state legislators in support of three pieces of pending legislation. The district court concluded that these mailings constituted "lobbying" as defined by the Act, and ordered Knox to register and report as a lobbyist.

On or about January 20, 1982, the NRA-PVF contributed $4,950 to the Minnesota Gun Owners Political Victory Fund. Knox, who was serving at the time as chairman of the NRA-PVF, intended that the contribution would be used primarily to influence state elections, and it was so used. On August 22, 1982, the NRA, through the NRA-ILA, mailed a two-page letter to all of its members in Minnesota. The letter, urging the defeat of Warrent Spannaus in an upcoming gubernatorial primary election, included a "Dump Spannaus" bumper sticker and a "Dump Spannaus" brochure. The bumper stickers and brochures were paid for by the NRA-PVF; the NRA paid for postage and the cost of preparing and printing the cover letter. In addition, in September 1982, the NRA spent over $8,000 in mailing "Dump Spannaus" postcards to its members in Minnesota. The district court concluded that these expenditures brought the NRA and the NRA-PVF within the definition of a "political fund" and ordered them to register and file regular reports.

In this appeal, the appellants claim that the Act is unconstitutional when applied to a private association, such as the NRA, communicating with its own members con-

cerning political elections. They contend that the Act's reporting requirements inhibit members from exercising their first amendment right of association, and that the Act's definition of a "lobbyist" violates the equal protection clause of the fourteenth amendment because it contains arbitrary exceptions for persons such as shareholders in family farm corporations.

II. DISCUSSION.

A. First Amendment Arguments.

The appellants contend that both the lobbyist and political fund registration requirements violate their first amendment right of association. They object to the lobbyist registration provision because they claim that it interferes with communications between members of a voluntary organization. They object to the political fund provision because it requires disclosure of the names, addresses, and employers of certain contributors. Appellants claim that disclosure of this information has a chilling effect on NRA members' associational activities.

State laws which inhibit the exercise of first amendment rights are unconstitutional unless they serve a "compelling" state interest. *NAACP v. Alabama*, 357 U.S. 449, 463 (1957). In *United States v. Harriss*, 347 U.S. 612 (1953), the Supereme Court considered the government interest underlying the Federal Regulation of Lobbying Act, 2 U.S.C. §§ 261-270 (the Lobbying Act). The Lobbying Act contains a lobbyist registration provision similar to that in the Act, requiring disclosure of the lobbyist's employer, sources of funds, disbursements, and the legislation sought to be influenced.

In *Harriss*, the Court described the government's interest in lobbyist registration as follows:

> Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are

> regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to help prevent.

347 U.S. at 625 (Footnote omitted). The Court deemed this "a vital national interest," *id.* at 626, and concluded that the statute did not violate the freedoms guaranteed by the first amendment. Furthermore, the Court ruled that the Lobbying Act applied to the form of lobbying used in this case, namely, communication with lawmakers through an artificially stimulated letter campaign. *Id.* at 620. In light of *Harriss*, we think the State of Minnesota has a compelling interest in requiring lobbyists to register their activities. Accordingly, we reject the appellants' challenge to this part of the Act.

The Supreme Court has also considered the constitutionality of campaign financing disclosure laws. In *Buckley v. Valeo*, 424 U.S. 1 (1975), the Court analyzed the reporting and disclosure requirements of the Federal Election Campaign Act of 1971, 2 U.S.C. §§ 431-56 (the Campaign Act). The Court acknowledged that "compelled disclosure * * * can seriously infringe on privacy of association and belief guaranteed by the First Amendment." 424 U.S. at 64. Nevertheless, it found that the governmental interests underlying the disclosure requirement, namely, providing voters with important information about the candidates, deterring corruption, and avoiding the appearance of corruption, were "sufficiently important to outweigh the possibility of infringement * * *." *Id.* at 66-68. The Court then examined the record to determine whether any contributors had experienced threats of physical or economic harm as a result of the disclosure

requirement. Finding no evidence of such conduct, the Court concluded that "the substantial public interest in disclosure * * * outweighs the harm generally alleged." *Id.* at 72.

We conclude that, under *Buckley*, the State of Minnesota's interest in disclosure outweighs any infringement of the appellants' first amendment rights. The infringement in this case is no greater than that in *Buckley*, because the disclosure requirements here parallel those in the Campaign Act. In 1975, the Campaign Act called for quarterly reports listing the name, address, occupation, and place of business of each person who contributed $100 or more in a calendar year.[2] The Act requires disclosure of the name, address, and employer of each person who contributes $50 or more in one year for legislative races or $100 or more per year for statewide races or ballot questions. Minn. Stat. § 10A.20 subd. 3(b). In addition, the Act provides an exemption from the reporting requirement for any individual who "demonstrates by clear and convincing evidence that disclosure would expose him to economic reprisals, loss of employment or threat of physical coercion." Minn. Stat. § 10A.20 subd. 8. Thus, as in *Buckley*, the State of Minnesota recognizes that extreme hardship in individual cases might outweigh the State's interest in disclosure. The appellants in this case did not apply for the exemption. Therefore, on the record before us, we hold that the financial disclosure portions of the Act are not unconstitutional as applied to these appellants.

The appellants suggest that this case can be distinguished from *Harriss* and *Buckley* because the lobbying activity here occurred between members of a voluntary association. We do not think this distinction is constitutionally significant. The Act does not focus on the group affiliation of a lobbyist, it focuses on lobbying activity.

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[2] The current version of the Campaign Act does not require disclosure of a contributor's name until contributions reach $200 in a year. 2 U.S.C. § 434(b)(3) (1982).

When persons engage in an extensive letterwriting campaign for the purpose of influencing specific legislation, the State's interest is the same whether or not those persons are members of an association. The appellants have articulated no reason why their membership in the NRA should give them any greater constitutional protection with respect to lobbying activity than is enjoyed by other citizens. Therefore, we conclude that the constitutionality of this legislation is not affected by the fact that it has been applied to communications between the members of an association.

B. Equal Protection Argument.

The appellants' final argument applies only to the lobbyist registration portion of the Act. The Act's definition of the word "lobbyist" specifically excludes certain individuals, including public officials and shareholders in family farm corporations, under specified circumstances. Minn. Stat. § 10A.01 subd. 11. The appellants argue that the State has not demonstrated a "rational connection" between these exceptions and a legitimate state purpose.[3]

We note at the outset that, under the rational basis test, legislative classifications are presumed to be valid. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 314 (1976); *Arceneaux v. Treen*, 671 F.2d 128, 132 (5th Cir. 1982). In order to overcome this presumption, the appellants have the burden of proving "that the facts on which the legislature may have relied in shaping the classification 'could not reasonably be conceived to be true by the governmental decisionmaker.'" *Brandwein v. California Bd. of Osteopathic Examiners*, 708 F.2d 1466, 1470 (9th Cir. 1983) (quoting *Vance v. Bradley*, 440 U.S. 93, 111 (1979)). In this case, the appellants have not dis-

[3] Because the appellants have not argued that a more demanding test applies to the classificaiton, we limit our discussion to the rational basis test.

cussed the Minnesota legislature's reasons for excluding certain persons from its definition of a lobbyist. We conclude that the appellants have failed to carry their burden of proof and that the presumption of validity remains in effect. Accordingly, we reject the appellants' equal protection argument.

III. CONCLUSION

The appellants having demonstrated no constitutional deficiencies in the Act, we affirm the opinion of the district court.

A true copy.

ATTEST:

Clerk, U.S. Court of Appeals, Eighth Circuit.

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil 4-82-1458

MINNESOTA STATE ETHICAL PRACTICES BOARD,
Plaintiff,

vs.

THE NATIONAL RIFLE ASSOCIATION OF AMERICA, NEAL KNOX, WILLIAM B. BINSWANGER, WARREN CASSIDY, THE NATIONAL RIFLE ASSOCIATION POLITICAL VICTORY FUND and MICHAEL MCCABE,
Defendants.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
ORDER FOR JUDGMENT

Hubert H. Humphrey, III, Attorney General, State of Minnesota, by David L. Graven and Jeffrey R. Brauchle, Special Attorneys, Holmes & Graven, 470 Pillsbury Center, Minneapolis, MN 55402, for plaintiff.

Mark G. Ohnstad and Marsh J. Halberg, Thomsen Nybeck Johnson Bouquet & VanValkenburg, 7250 France Avenue South, Suite 102, Edina, MN 55435, for defendants.

Plaintiff Minnesota State Ethical Practices Board (hereinafter "EPB") has commenced an action against The National Rifle Association of America (hereinafter

"NRA"), The National Rifle Association Political Victory Fund (hereinafter "NRA-PVF"), and several individuals employed by both the NRA and the NRA-PVF, seeking both declaratory judgment and injunctive relief. In this action, plaintiff seeks to require certain individuals employed by the NRA and its lobbying division, the National Rifle Association Institute for Legislative Affairs (hereinafter "NRA-ILA"), to register as lobbyists pursuant to Minnesota law and to file reports in accordance with that law. In addition, plaintiff seeks to require the NRA and the NRA-PVF to register as political funds pursuant to Minnesota law as a result of alleged activities carried on with regard to Minnesota elections.

The defendants contend that Minnesota law exempts them from both the lobbyist registration law and political fund financial disclosure law. In the event a determination is reached that both laws are applicable to them, the defendants assert the statutes in question are unconstitutional as applied. Defendants assert that their freedom of association guaranteed by the first amendment would be violated and a chilling effect would result, if the lobbying statutes are determined to apply to communication between members of their voluntary association. Defendants also contend both laws violate the fourteenth amendment guarantee of equal protection. Furthermore, defendants contend that part of plaintiff's claim is barred by the Minnesota statute of limitations.

The matter came on for a court trial before the Honorable Miles W. Lord on February 13th and 15th, 1984, at the United States District Courthouse, Minneapolis, Minnesota. David L. Graven and Jeffrey R. Brauchle appeared for and on behalf of plaintiff; Mark G. Ohnstad and Marsh J. Halbert appeared for and on behalf of the defendants.

Upon the oral argument of counsel and upon all the files, records, memoranda and proceedings herein, the court makes the following:

FINDING OF FACT

The Parties and Case Procedure

1. Plaintiff Minnesota State Ethical Practices Board (EPB), is an agency of the State of Minnesota created pursuant to the Minnesota Ethics and Government Act, Minn. Stat. § 10A.01 *et seq.* which is assigned the responsibility of enforcing that law.

2. Defendant National Rifle Association (NRA) is a Delaware corporation with its principal offices located at 1600 Rhode Island Avenue Northwest, Washington, D.C. 20036. The National Rifle Association Institute for Legislative Affairs (NRA-ILA) is the lobbying division or section for the NRA.

3. Defendant National Rifle Association Political Victory Fund (NRA-PVF) is a registered federal political action committee.

4. The NRA and NRA-PVF are separate entities under campaign financing laws with the NRA receiving its funds from the NRA membership of approximately three million national members, paying $15 per year for regular memberships and $300 per year for life memberships. The NRA-PVF receives its funds from approximately 108,000 voluntary contributors nationwide.

5. Defendant Neal Knox was the Executive Director of the NRA-ILA as well as the Chairman of the NRA-PVF from January 12, 1978, to April 15, 1982.

6. Defendant Warren Cassidy has been the Executive Director of the NRA-ILA as well as the Chairman of the NRA-PVF from April 15, 1982 to date.

7. Defendant William B. Binswanger at all times material to these proceedings has been the Treasurer of the NRA.

8. Defendant Michael McCabe is the chief financial officer of the NRA-PVF.

9. Plaintiff EFB initiated commencement of this suit by service of the complaint on defendants Binswanger and the NRA on October 18, 1982. Defendant Cassidy was served on October 19, 1982, and defendant Knox was served on November 2, 1982. Defendants NRA-PVF and Michael McCabe were subsequently added as defendants by stipulation.

Lobbying Activity

10. On or about March 31, 1981, defendant Knox caused the NRA-ILA to mail a letter to all members of the NRA residing in Minnesota for the purpose of attempting to influence legislative action on the proposed "mourning dove hunting bill" by urging them to communicate with their legislators.

11. On or about April 8, 1981, defendant Knox and the NRA-ILA caused to be delivered to NRA members residing in Minnesota postcards urging communication with their Minnesota legislators regarding pending legislation. During approximately the same time period, defendant Knox through the NRA-ILA caused to be mailgrammed to the state via Western Union appeals to NRA members in Minnesota to influence legislation by contacting their legislators.

12. On or about April 24, 1981, defendant Knox signed and caused the NRA-ILA to deliver a letter to 41,659 members of the NRA residing in Minnesota, again for the purpose of attempting to influence legislative action by urging them to communicate with their legislators.

13. Each of the aforementioned four mailings into the State of Minnesota involved sums in excess of $250.

14. On or about October 13, 1981, plaintiff pursuant to Minn. Stat. § 10A.03 sent official notice of failure to register by certified mail to defendant Knox.

15. On or about November 2, 1981, plaintiff pursuant to Minn. Stat. § 10A.03 sent a second official notice of failure to register by certified mail to defendant Knox.

16. On or about December 17, 1981, plaintiff pursuant to Minn. Stat. § 10A.03 sent official notice of failure to register by certified mail to defendant Knox.

17. Defendant Knox, after receiving official notice, on or about October 13, 1981, November 5, 1981, and December 21, 1981, did not and has not filed the required lobbyist regislation form with the plaintiff EPB nor reported his lobbying activities.

18. In 1983, similar mailings to NRA members over the signature of Theodore Lattanzio for the NRA-ILA were mailed to NRA members in Minnesota again urging them to communicate with public officials and legislators to influence pending legislation.

19. It is the intent of the NRA to continue this activity.

Political Fund Activity

20. On or about September 13, 1980, defendant NRA-PVF, chaired by defendant Knox, caused a cash contribution of $4,950 to be made from the NRA-PVF to the Minnesota Gun Owners Political Victory Fund (hereinafter "MGO-PVF"), a Minnesota state and federal political action committee. This contribution, reported to the Minnesota State Ethical Practices Board on or about October 27, 1980, was deposited into the MGO-PVF's checking account. Funds were expended from this account for the purpose of influencing both state and federal elections in Minnesota. Defendant Neal Knox knew at the time of the contribution that its intended uses included the influencing of state elections in Minnesota, evidenced by his being copied with a letter sent on June 29, 1980, from Jon Willand of the MGO-PVF to Theodore Lattanzio of the NRA-PVF which indicated the entire amount of the anticipated contribution might have to be spent on two state races alone.

21. Defendants NRA-PVF, Knox, McCabe and Cassidy have not filed with the plaintiff a statement of organiza-

tion or report as a political fund on behalf of the NRA-PVF at any time following the contribution on or about September 13, 1980.

22. On or about January 20, 1980, defendant NRA-PVF chaired by defendant Knox caused a further cash contribution in the amount of $4,950 to be made from the NRA-PVF to the MGO-PVF. This contribution was made for the purpose of defeating the gubernatorial candidacy of Warren Spannaus. The money was deposited into the checking account of the MGO-PVF and expended exclusively for the purpose of influencing state elections, including the defeat of Warren Spannaus for the office of Minnesota governor. At the time of the contribution, defendant Knox, who was serving as both the Executive Director of the NRA-ILA and the Chairman of the NRA-PVF, knew and intended that the contribution would be used primarily for the defeat of Warren Spannaus and further knew that it would not be used for federal election campaign purposes.

23. Defendants NRA-PVF, Knox, McCabe and Cassidy have not filed with the plaintiff a statement of organization or report as a political fund on behalf of the NRA-PVF following the contribution on or about January 20, 1982.

24. On or about August 22, 1982, the NRA through its NRA-ILA caused to be mailed to some 53,864 NRA members in Minnesota a two-page letter urging that Warren Spannaus be defeated in his primary bid for nomination for Governor of Minnesota. This mailing included a two-page "Dump Spannaus" letter, a black and green "Dump Spannaus" bumper sticker, and a black and green "Dump Spannaus" brochure. The cost of preparation of the letter, copying of the letter, sorting of the mail, and postage were all borne by the NRA-ILA. The cost of printing the bumper stickers and brochures was borne by the NRA-PVF. Over $20,000 was expended in this mailing.

25. In September of 1982, a "Dump Spannaus" postcard mailing to some 54,000 NRA members in Minnesota was mailed by the NRA through its NRA-ILA. Over $8,000 was expended in this effort.

26. In addition, the NRA through its NRA-ILA expended some $14,792.82 on influencing certain Minnesota state legislative races through mailings to its NRA members residing in Minnesota as well as some $13,000 expended in mailing 54,749 poiltical preference charts to NRA members in Minnesota grading Minnesota state and federal candidates.

27. Defendants NRA, Cassidy and Binswanger have not filed with the plaintiff a statement of organization or report as a political fund on behalf of the NRA following its 1982 election activities through the NRA-ILA.

CONCLUSIONS OF LAW

1. Mailings of the defendant NRA through the NRA-ILA and its chairman, defendant Knox, identified by findings of fact 10, 11 and 12 above, represent "lobbying" as that term is defined by Minn. Stat. § 10A.01, Subdivision 11.

2. The activities of the defendant NRA through the NRA-ILA and its chairman, defendant Knox, identified by findings of fact 10, 11, 12 and 13 above, each exceed the statutory threshold of $250 and/or 5 hours per month for reporting lobbying activities as defined by Minn. Stat. § 10A.01, Subdivision 11(a) and (b).

3. Neither Minnesota law nor the first or fourteenth amendments to the United States Constitution prohibits the State of Minnesota, which has a compelling interest in the regulation of lobbying, from requiring registration and reporting of these activities.

4. Defendant Neal Knox is obliged and should be ordered to register and report as a lobbyist in accordance with the

Minnesota Ethics of Government Law. *See*, Minn. Stat. § 10A.03 and 10A.04.

5. Defendant NRA-PVF acted as a Minnesota political fund in contributing the sum of $4,950 to the MGO-PVF on or about September 13, 1980, as identified by finding of fact 20 above, as defined by Minn. Stat. § 10A.01, Subdivision 16.

6. Defendant NRA-PVF and its chairman, defendant Knox, and its chief financial officer, defendant McCabe, violated the Minnesota Ethics of Government Law in connection with the September 13, 1980, contribution by not registering and reporting as a political fund in Minnesota as required by Minn. Stat. §§ 10A.14 and 10A.20.

7. Defendant NRA-PVF acted as a Minnesota political fund in contributing the sum of $4,950 to the MGO-PVF on or about January 20, 1982, identified by findings of fact 22, as defined by Minn. Stat. § 10A.01, Subdivision 16.

8. Defendant NRA-PVF, its Chairman, defendant Knox, and its chief financial officer, defendant McCabe, violated the Minnesota Ethics of Government law in connection with the January 20, 1982, contribution by not registering and reporting as a political fund in Minnesota as required by Minn. Stat. §§ 10A.14 and 10A.20.

9. Defendant NRA-PVF behaved as a Minnesota political fund in spending substantial sums of money, as described in findings of fact 22 and 24. Plaintiff is entitled to an order compelling the NRA-PVF to register and file a report as a political fund as a result of its 1982 election activities as required by Minn. Stat. §§ 10A.14 and 10A.20. The court finds it unnecessary to determine whether plaintiff's cause of action pertaining to defendant NRA-PVF's September 13, 1980, contribution is barred by the Minnesota statute of limitations. *See* Minn. Stat. § 541.07(2).

10. Defendant NRA through its NRA-ILA has behaved as a Minnesota political fund in expending substantial sums of money on the "Dump Spannaus" mailing and other election mailings, identified in findings of fact 24, 25 and 26, as defined in Minn. Stat. § 10A.01, Subdivision 16.

11. Defendants NRA, its Treasurer Binswanger and Chairman Cassidy of the NRA-ILA, violated the Minnesota Ethics of Government law by not registering and reporting as a political fund in Minnesota in connection with its 1982 election activities, as required by Minn. Stat. § 10A.14 and 10A.20.

12. Plaintiff EPB is entitled to an order compelling defendant NRA to register and report as a Minnesota political fund as a result of its 1982 election activities through its NRA-ILA, in accordance with the Minnesota Ethics of Government law, Minn. Stat. §§ 10A.14 and 10A.20.

13. Defendants Neal Knox, the NRA and the NRA-PVF shall each pay the sum of $200.00 in late filing fees to the Minnesota State Ethical Practices Board. *See*, Minn. Stat. §§ 10A.03, Subdivision 3; 10A.04, Subdivision 5; 10A.14, Subdivision 4; a 10A.20, Subdivision 12.

ORDER FOR JUDGMENT

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED:

1. That defendant Neal Knox is hereby ordered to register pursuant to Minn. Stat. § 10A.03 and report pursuant to Minn. Stat. § 10A.04 regarding all lobbying activities conducted by him, including but not necessarily limited to, mailings to NRA members dated March 31, 1981, and April 24, 1982. Said registration and reports shall be filed within fifteen (15) days following entry of this Order;

2. That defendant Neal Knox is hereby ordered to pay the sum of $200 to the Minnesota State Ethical Practices

Board as late filing fees pursuant to Minn. Stat. §§ 10A.03, Subdivision 3 and 10A.04, Subdivision 5.

3. That it is hereby adjudged and declared that any appeal or communication by defendant National Rifle Association through its Institute for Legislative Affairs and by defendant National Rifle Association Political Victory Fund, and any employee of either organization or persons, NRA members or otherwise, in the State of Minnesota which urges such persons to communicate with public officials in Minnesota for the purpose of attempting to influence legislative or administrative action constitutes lobbying within the meaning of Minn. Stat. § 10A.01, Subdivision 11. Any such activity shall, subject to the $250/5 hour threshold stated in Minn. Stat. § 10A.01, Subdivision 11, trigger registration and reporting requirements. Any failure to so register and report may be subject to an application for contempt of court sanctions by plaintiff Minnesota State Ethical Practices Board.

4. That it is hereby adjudged and declared that defendant National Rifle Association Political Victory Fund, by virtue of its 1982 contribution to the Minnesota Gun Owners Political Victory Fund, acted as a "political fund," pursuant to Minn. Stat. 10A.01, Subdivision 16.

5. That defendants National Rifle Association Political Victory Fund, Chairman Warren Cassidy, and chief financial officer Michael McCabe are hereby ordered to report and register as a political fund regarding their 1982 activities in state elections, pursuant to Minn. Stat. §§ 10A.14 and 10A.20, within fifteen (15) days following entry of this order. Any failure to so register and report may be subject to an application for contempt of court sanctions.

6. That it is hereby adjudged and declared that defendant National Rifle Association through its Institute for Legislative Affairs activities in connection with the 1982

Minnesota state elections, acted as a "political fund" pursuant to Minn. Stat. § 10A.01, Subdivision 16.

7. That defendants National Rifle Association, Warren Cassidy as the Executive Director of its Institute for Legislative Affairs, and Treasurer William Binswanger, are hereby ordered to report and register as a political fund regarding their 1982 activities in Minnesota state elections, pursuant to Minn. Stat. §§ 10A.14 and 10A.20, within fifteen (15) days following entry of this order. Any failure to so register and report may be subject to an application for contempt of court sanctions.

8. That defendants National Rifle Association and National Rifle Association Political Victory Fund are each ordered to pay to the Minnesota State Ethical Practices Board the sum of $200 as late filing fees pursuant to Minn. Stat. §§ 10A.14, Subdivision 4 and 10A.20, Subdivision 12.

9. That defendants are permanently enjoined from engaging in any activity which urges Minnesota members to contact legislators for the purpose of influencing state legislation without registering and reporting as a lobbyist in the form required by Minn. Stat. § 10A.01 *et seq.*, except where such activity involves spending less than $250 in any year or five hours in any month.

10. That defendants are permanently enjoined from expending monies in Minnesota for the purpose of influencing the nomination or election of any state candidate or to promote or defeat any ballot question without registering and reporting as a political fund in the form required by Minn. Stat. § 10A.01 *et seq.*

Dated: May 2, 1984

/s/ Miles W. Lord
MILES W. LORD
Chief Judge

APPENDIX D

STATE STATUTES REGARDING ELECTION CONTRIBUTIONS & EXPENDITURES

STATE	EXEMPTION FOR COMMUNICATION TO MEMBERS
ARIZONA AZ Revised Statutes § 16-920 (B)	Communications by membership organizations to its members and their families permitted
ARKANSAS AR Statutes Ann. Section 3-1109 (B) (i)	Contributions shall not include any communication by a membership organization to its members if such membership organization is not organized primarily for influencing elections.
CONNECTICUT CT Gen. Statutes Ch. 150 § 9-335 (14) (B) (ii)	Contribution does not include any communication made by any membership organization to its members
WASHINGTON, D.C. D.C. Code § 1-1407 (B) (iii)	Contribution shall not include communications by an organization other than a political party solely to its members and their families on any subject
ILLINOIS * IL Statutes Ann. § 100.10 (d) (4) (c)	Contributions shall not include regular publication by membership organization to its members, HOWEVER publications of extraordinary or special nature to support or oppose a candidate is a contribution
MAINE ME Revised Statutes § 1552 (5) (c) (3)	Expenditure does not include any communication by a membership organization to its members if that membership organization is not organzed primarily for the purpose of influencing elections

* States which do NOT specifically exempt communications to members.

STATE	EXEMPTION FOR COMMUNICATION TO MEMBERS
MICHIGAN MI Compiled Laws § 169.206	Expenditure does not include communications by a person strictly with that persons paid members
MINNESOTA MN Statutes Ann. § 101.265	Nothing in Chapter 10A shall be construed as abridging the right of an association to communicate with its members
MISSOURI Ann. MO Statutes § 130.011(12) (e) b	Expenditure does not include the internal dissemination of information by any membership organization . . . . advocating the election or defeat of a candidate to its members. (Cost over $200 are reportable)
MONTANA MT Code Ann. § 13-1-101(3) (b) (iii)	Contribution does not mean cost of any communication by a membership organization to its members so long as the organization is not primarily a political committee
NEBRASKA Revised Statutes of NE § 49-1419(3) (b)	Expenditure shall not include expenditures for communications by a person strictly with the persons paid members
NORTH CAROLINA * Gen. Statutes of NC § 163-278.6(6)	Contribution *includes* publication of campaign literature and materials
NORTH DAKOTA ND Century Code § 16.1-08-04	Nothing shall prohibit corporations or associations from making contributions or expenditures for the purpose of . . . promoting general political philosophy deemed in the best interest of its members

* States which do NOT specifically exempt communications to members.

STATE	EXEMPTION FOR COMMUNICATION TO MEMBERS
OHIO OH Revised Code § 3515.08(B)	An expenditure by a political committee shall not be considered a contribution if the purpose is to only inform members by means of mailed publications or direct communication of its activities or endorsements
PENNSYLVANIA PA Statutes Ann. § 1633(C)	Nothing shall prohibit direct private communications by an unincorporated association to its members
TENNESSEE TN Code Ann. § 2-10-102(D)	Contribution shall not include communication by any membership organization to its members if the organization is not organized primarily for the purpose of influencing elections
TEXAS TX Statutes Ann. § 14.06(C)	Contribution shall not include communication by an association to its members
WEST VIRGINIA WV Code § 3-8-8(b)(1)(A)	Direct communication by a corporation to its stockholders not prohibited
WISCONSIN WI Statutes Ann. Chapter 11 § 11.29(1)	Nothing in this chapter restricts any corporation or voluntary association from making disbursements for the purpose of communicating only with its members
WYOMING WY Statutes Ann. § 22-25-102(d)	Any organization . . . may communicate directly with its own members on behalf of a particular candidate or party

STATE ELECTION STATUTES

States where Communications to Members are EXEMPTED from requirements of election statutes regarding Contributions & Expenditures

Arizona	Minnesota	Pennsylvania
Arkansas	Missouri	Tennessee
Connecticut	Montana	Texas
Washington, D.C.	Nebraska	West Virginia
Maine	North Dakota	Wisconsin
Michigan	Ohio	Wyoming

APPENDIX E

STATE STATUTES REGARDING LOBBYING

STATE	DEFINITION OF LOBBYING/LOBBYIST
ALABAMA Code of AL § 36-25-1	Practice of promoting or opposing introduction or enactment of legislation before the legislature (AL Ethics Act States lobbying is direct communication)
ALASKA AK Statutes § 24.45.171 (8)	Person employed . . . to communicate directly or through his agents with any public official for the purpose of influencing legislative action
ARIZONA AZ Revised Statutes § 41-1231 (3)	Person employed . . . for the purpose of attempting to influence passage or defeat of legislation by communicating or attempting to communicate with any legislator
ARKANSAS AR Statutes § 4-801	Person who . . . seeks to influence in any manner the vote of the members of the House or Senate
CALIFORNIA CA Code Ann. Gov't Code § 86100	Individual who is employed . . . to communicate directly or through his agents with any elective official . . . for the purpose of influencing legislative action.
COLORADO CO Revised Statutes § 24-6-301 (3.5) (a)	Communicating directly or soliciting others to communicate with a covered official . . . for the purpose of aiding or influencing [legislation]
CONNECTICUT CT Gen. Stat. Ann. Chapter 10 § 1-91 (k)	Communicating directly or soliciting others to communicate with any official . . . for the purpose of influencing any legislative or administrative action

STATE	DEFINITION OF LOBBYING/LOBBYIST
DELAWARE DE Code Ann. Title 29 § 1601	Individual who acts to promote, advocate, influence or oppose any matter pending before the General Assembly by direct communication with a member of the General Assembly
WASHINGTON, D.C.* D.C. Code § 1-1451(7)(A)	Communicating directly with any official . . . with the purpose of influencing any legislative action
§ 1451(7)(B)(v)	Lobbying shall not include a publication whose primary audience is the organization's members
FLORIDA FL Statutes Ann. § 11.045(2)	Persons . . . who seek to encourage passage or defeat of any legislation . . . shall register before engaging in such lobbying activity in Tallahassee
GEORGIA Code of GA § 28-7-1	Every person representing an organization for the purpose of aiding or opposing directly or indirectly the enactment of a bill by the General Assembly shall [register]
HAWAII HI Revised Statutes § 97-1(7)	Communicating directly or through an agent or soliciting others to communicate with any official in the legislative or executive branch for the purpose of influencing legislative or administrative action
IDAHO ID Code § 67-6602(g)	Attempting through contacts with or causing others to make contact with members of the legislature . . . to influence approval or rejection of any legislation

* States where communications to members do not constitute lobbying.

STATE	DEFINITION OF LOBBYING/LOBBYIST
ILLINOIS IL Statutes Ann. § 63-173	Any person who for compensation . . . undertakes to promote or oppose the passage of any legislation by the General Assembly [must register]
INDIANA Burns IN Statutes § 2-7-1-9	Communicating by any means or paying others to communicate by any means with any legislative official for the purpose of influencing any legislative action
IOWA Senate & House Rule 1	Person who is paid compensation or expends money for encouraging passage or defeat of legislation
KANSAS KS Statutes Ann. § 46-225	Promoting or opposing in any manner action or nonaction by the legislature on any legislative matter
KENTUCKY KY Revised Statutes § 6.250	Person employed as a legislative agent to promote, oppose or act with reference to any legislation
LOUISIANA LA Revised Statutes § 24.52	Person who by himself or through any agent or employee or other persons in any manner whatsoever directly or indirectly solicits, collects or receives money . . . the purpose of which is to aid in the accomplishment of influencing directly or indirectly the passage or defeat of any legislation
MAINE ME Revised Statutes Ann. Chapter 15 § 312(8)	Communicate directly with any official in the legislative branch for the purpose of influencing any legislative action
MARYLAND Ann. Code of MD Art. 40A § 1-201(g)	Person who . . . in the presence of any official . . . has communicated with that official or employee for the purpose of influencing any legislative action

STATE	DEFINITION OF LOBBYING/LOBBYIST
MASSACHUSETTS MA General Laws Chapter 39 § 39	Any person who for compensation or reward does any act to promote, oppose or influence legislation
MICHIGAN MI Compiled Laws § 4.411	Communicating directly with an official . . . for the purpose of influencing legislative or administrative action
MINNESOTA MN Statutes Ann. Ch. 10A § 10A.01(11)	Any individual . . . who spends more than 5 hours in any month or more than $250 . . . in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials
MISSISSIPPI MS Code Ann. § 5-7-1	Person . . . employs any person or firm to attempt at any time to influence in any manner the act or vote of any member of the legislature . . . [shall register]
MISSOURI Ann. MO Statutes § 105.470(3)	Any person . . . who acts . . . for the purpose of attempting to influence taking, passage, amendment, delay or defeat of any legislation by the legislature
MONTANA MT Code Ann. § 5-7-102(4)	The practice of promoting or opposing introduction or enactment of legislation before the legislature
NEBRASKA Revised Statutes of NE § 49-1433	Practice of promoting or opposing for another person . . . the introduction or enactment of legislation or resolutions before the legislature
NEVADA NV Revised Statutes § 218.912	Person who appears in person in the legislative building and communicates directly with a member of the legislative branch on behalf of someone other than himself to influence legislative action

STATE	DEFINITION OF LOBBYING/LOBBYIST
NEW HAMPSHIRE NH Revised Statutes Ann. § 15:1	Person employed for consideration by another person in a representative capacity to promote or oppose directly or indirectly any legislation . . . [shall register]
NEW JERSEY NJ Statutes Ann. § 52:13C-20(g)	Person who receives . . . compensation . . . to influence legislation by communication personally or through an intermediary to the legislature
NEW MEXICO NM Statutes § 2-11-2(D)	Attempting to influence any decision related to any matter to be considered by the legislative branch
NEW YORK McKinney's Cons. Laws of NY Chapter 1040 Section 2(c)	Attempt to influence passage or defeat of legislation by either house of the legislature
NORTH CAROLINA Gen. Statutes of NC Art. 9A Cha. 1220 § 120-47.1	Employed . . . by another person to give facts or arguments to member of General Assembly . . . concerning any bill, resolution amendment, report or claim pending or to be introduced
NORTH DAKOTA ND Century Code § 54-05.1-02	Any person who in any manner whatsoever directly or indirectly attempts to secure passage, amendment, or defeat of any legislation by the legislative assembly
OHIO OH Revised Statutes Ann. § 101.70(F)	Individual engaged during at least a portion of his time to influence legislation as one of his main purposes Influence legislation means promote, advocate or oppose passage or defeat of legislation by direct communication

STATE	DEFINITION OF LOBBYING/LOBBYIST
OKLAHOMA OK Statutes Ann. § 4001 (8)	Promoting, opposing or otherwise influencing any official action
OREGON OR Revised Statutes Ann. § 171.725 (6)	Influencing or attempting to influence legislation
PENNSYLVANIA PA Statutes Ann. Title 46 § 148.2	Advocate passage or defeat of legislation to members or staff of the General Assembly or officers or employees of any agency
RHODE ISLAND General Laws of RI § 22-10-1	Any individual who acts . . . on behalf of another person for the purpose of promoting, opposing, amending or influencing in any manner the passage by the General Assembly of any legislation
SOUTH CAROLINA Code of Laws of SC Chapter 6 § 30-151 (d)	Direct communication with any member of the General Assembly or their staff to influence passage or defeat of legislation
SOUTH DAKOTA SD Codified Laws § 2-12-1	Any person who is employed to act as lobbyist to seek introduction of legislation or to promote, oppose, or influence in any manner the passage by the legislature of any legislation . . . [shall register]
TENNESSEE TN Code Ann. § 3-67-102 (11)	Communicating directly or soliciting others to communicate with any official in the legislative or executive branch for the purpose of influencing legislative or administrative action

STATE	DEFINITION OF LOBBYING/LOBBYIST
TEXAS *	
TX Statutes Ann. Article 6252-9c § 3	Person must register if he receives compensation or makes expenditures to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action
Article 6252-9c § 4(3)	Not required to register if only activity is to encourage or solicit members of an organization to communicate directly with a member of the legislative or administrative branch to influence legislaitve or administrative action
UTAH	
UT Code Ann. § 36-11-2(1)	Any person who receives compensation or expends money for the purpose of attempting to influence the passage or defeat of any legislation by the legislature . . . [shall register]
VERMONT	
Vermont Statutes Ann. Title 2 Ch. 11 § 251(2)	Person who for compensation does directly or indirectly any act with the purpose of influencing any legislative action
VIRGINIA	
Code of VA Ch. 2.1 § 300-28.1(6)	Promoting, advocating or opposing any matter by an individual for or on behalf of another
WASHINGTON	
Revised Code of WA Ann. § 42.17.020(18)	Attempting to influence passage or defeat of any legislation by the legislature
WEST VIRGINIA	
WV Senate Rule 55 WV House Rule i37	Person who attempts to encourage the passage, defeat or modification of legislation on a regular basis

* States where communications to members do not constitute lobbying.

STATE	DEFINITION OF LOBBYING/LOBBYIST
WISCONSIN WI Statutes Ann. § 13.62(10)	Practice of attempting to influence legislative or administrative action by direct oral or written communication with any elective state official
WYOMING WY Statutes Ann. § 28-7-101	Before making any representation to the legislature . . . [must register]

STATE LOBBYING STATUTES

States where only communications with officials constitutes Lobbying	States where communications with officials or urging others to communicate with officials specifically constitutes Lobbying	States where Lobbying does not specifically include urging others to communicate with legislators but statute is broad enough to include it
Alabama	Colorado	Arkansas
Alaska	Connecticut	Illinois
Arizona	Georgia	Iowa
California	Hawaii	Kansas
Delaware	Idaho	Kentucky
Washington, DC	Louisiana	Massachusetts
Florida	Minnesota	Mississippi
Indiana	New Hampshire	Missouri
Maine	North Dakota	Montana
Maryland	Tennessee	Nebraska
Michigan	Vermont	New Mexico
Nevada		New York
New Jersey		Oklahoma
North Carolina		Oregon
Ohio		Rhode Island
Pennsylvania		South Dakota
South Carolina		Utah
Texas		Virginia
Wisconsin		Washington
Wyoming		West Virginia

85-824 (2)

No. 85-

Supreme Court, U.S.
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In the

Supreme Court of the United States

October Term, 1985

THE NATIONAL RIFLE ASSOCIATION OF AMERICA, NEAL KNOX, WILLIAM B. BINSWANGER, WARREN CASSIDY, THE NATIONAL RIFLE ASSOCIATION POLITICAL VICTORY FUND, AND MICHAEL MCCABE,
Petitioners,

vs.

MINNESOTA STATE ETHICAL PRACTICES BOARD,
Respondent.

RESPONDENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether this court should grant a writ of certiorari where, as here, the petition for certiorari is not timely filed pursuant to statute.

2. Whether this matter is of such signficance or importance on the merits to justify review by this court on certiorari.

3. Whether the courts of appeal are in conflict so as to justify review by this court on certiorari.

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United States Supreme Court Rule 20 . 9

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985

No. 85-

THE NATIONAL RIFLE ASSOCIATION OF AMERICA, NEAL KNOX, WILLIAM B. BINSWANGER, WARREN CASSIDY, THE NATIONAL RIFLE ASSOCIATION POLITICAL VICTORY FUND, AND MICHAEL MCCABE,
Petitioners,

v.

MINNESOTA STATE ETHICAL PRACTICES BOARD,
Respondent.

RESPONDENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

OPINIONS BELOW

The opinion of the Court of Appeals is included in petitioner's appendix and is reported at 761 F.2d 509 (8th Cir. 1985). The original order denying rehearing is not reported, but is included in respondent's appendix. An amended order denying rehearing is dated August 16, 1985, and is contained in petitioner's appendix. The opinion of the District Court is not reported.

JURISDICTION

Respondent contends that the jurisdiction of this court to consider the petition for writ of certiorari has not been timely invoked. The judgment of the Court of Appeals was entered on May 14, 1985. A timely petition for rehearing was denied on August 9, 1985. On August 16, 1985, the Court of Appeals amended its denial of the petition for rehearing, adding language stating that three judges dissented from the denial. Petitioners invoked the jurisdiction of this Court under 28 U.S.C. §1254 (1)(1966). The orders of the appeals court regarding the petition for rehearing are reproduced in respondent's appendix at pages 1a and 2a.

CONSTITUTIONAL PROVISIONS INVOLVED

The United States Constitution, Amendment I, is cited and quoted by petitioners.

STATUTES INVOLVED

The Minnesota Ethics in Government Act, Minn. Stat. §10A.01 (1984) et seq., has been cited and quoted by Petitioners.

STATEMENT OF THE CASE

Respondents concur with the Statement of the Case submitted by petitioners.

FACTS

The facts described by petitioners are substantially correct. Petitioners, in some cases, however, have trivialized their political activities in the State of Minnesota.

With regard to the lobbying activities of petitioners, it is true that on three separate occasions in 1981, the NRA caused thousands of letters to be mailed to its members in Minnesota. An additional undated postcard was also mailed into the state. These letters identified state legislators and urged that such targeted

legislators be telephoned and written regarding pending public legislation. One such mass mailing advised of a committee hearing and urged attendance.

Each of the mass mailings, however, went on to urge that non-members be enlisted in the lobbying effort. The undated postcard, for example, instructed "[P]lease try to attend this hearing and bring your fellow hunters, shooters, and sportsmen with you." The August 24, 1981 mailing stated "[U]rge your friends and neighbors to also contact their elected officials letting them know their support of these three sportsmen's bills." The April 8, 1981 mailing stated that " . . . crucial that you call Senator Gerald Willett at (612)296-4147 today and urge that he vote yes to morning dove hunting. Urge at least five other sportsmen to call."

These mailings involved over 150,000 pieces of mail sent into the State of Minnesota at a cost exceeding $30,000 and, as noted above, while the letters were in fact addressed only to members of the NRA, three of the four mass mailings urged members to enlist others to persuade legislators to support specific pending legislation.

The electioneering activities of petitioners were also minimized in their recitation of the facts. It is true, as conceded by petitioners, that the National Rifle Association Political Victory Fund, a federal political action committee, contributed $4950 to the Minnesota Gun Owners' Political Victory Fund, a state political fund and federal political action committee. The evidence at trial of this matter established much more than that, however. The money was specifically

intended to fund opposition to the gubernatorial candidacy of Warren Spannaus. (T. 206-207). Neal Knox, treasurer of the NRAPVF and executive director of the NRA, had been personally aware of Spannaus' gun control positions for years, and regarded Spannaus as a "target" for the NRA. (T. 208-209). Knox knew the money would be used to defeat Spannaus. In fact, the money was under no circumstances to be used for federal campaigns to avoid duplication of direct contributions by petitioners. The MGOPVF placed the money in its general fund, which was in fact expended on the "Dump Spannaus" campaign and other state races. (T. 133-138).

Other electioneering efforts were identified at trial. In October, 1980 the NRA, through the its Institute for Legislative Action, mailed a political

preference chart to each NRA member which rated Minnesota state and federal candidates. On August 22, 1982, the NRA, through the NRA-ILA, caused approximately 54,000 letters to be mailed to NRA members in Minnesota urging that Warren Spannaus be defeated in the gubernatorial primary. This mailing included a two page letter, a "Dump Spannaus" bumper sticker, and a "Dump Spannaus" brochure. Cost of preparing and copying the letter, sorting the mail, and postage were borne by the NRA-ILA, while NRA-PVF paid for printing the bumper stickers and brochures. In September, 1982, a "Dump Spannaus" postcard was mailed to approximately 54,000 NRA members by the NRA-ILA. A total of over $55,000 was expended by the NRA, the NRA-PVF and the NRA-ILA in these efforts to influence Minnesota state elections.

REASONS FOR DENYING THE PETITION

I. THE PETITION FOR WRIT OF CERTIORARI HAS NOT BEEN TIMELY FILED AND CONSEQUENTLY SHOULD NOT BE CONSIDERED.

The Court of Appeals issued its order affirming the District Court on May 14, 1895. Petitioner's application for rehearing was denied on August 9, 1985. On August 16, 1985, the Court of Appeals (without request from any party) issued an amended order which noted that three members of the Court dissented from the denial of the petition for rehearing. This petition for certiorari was apparently filed with the Supreme Court of the United States on November 14, 1986. It was received in respondent's counsel's office on November 17, 1985.

Petitioners were allowed by statute ninety days to file their petition for a writ of certiorari. 18 U.S.C. §2101

(c)(1984). According to Supreme Court Rule 20.4, the ninety days commences with the denial of a petition for rehearing:

> . . . if a petition for rehearing is timely filed by any party in the case, the time for filing the petition for writ of certiorari for all parties . . . runs from the date of the denial of rehearing or of the entry of a subsequent judgment entered on the rehearing. Supreme Court Rule 20.4.

Consequently, unless this Court finds that the time for filing the petition for writ of certiorari is tolled during the period between the denial of the petition for rehearing in the Eighth Circuit and issuance of the amended order, this petition has been filed more than ninety days following denial of the petition for rehearing, and consequently, should not be considered.

Nothing in the rules or case law supports petitioner's contention that the petition for a writ has been timely filed.

The reason Supreme Court Rule 20 marks time from the denial for a rehearing is that the petition for rehearing operates to suspend the finality of the lower court's judgment pending the lower court's further determination whether the judgment should be modified so as to alter its adjudication of the rights of the parties. United States v. Healy, 376 U.S.75 (1964).

Here, of course, once the Eighth Circuit denied the petition for rehearing on August 9, 1985, that court's adjudications were concluded. No further opportunity for modification of the rights of the parties existed. The subsequent, gratuitous action of the Eighth Circuit in noting that three of its members would have reheard the matter is wholly non-substantive. The matter was ripe for petition to this court after August 9, 1985, and the time for petitioning ought

to be measured from that day. See also Federal Trade Commission v. Colgate Palmolive Co. et al., 380 U.S. 374 (1965) (time for certiorari runs from first judgment where second judgment merely reiterates the first).

In other cases, this court has consistently resolved that the period for filing a petition for certiorari is not tolled by events of no import. In Federal Trade Commission v. Minneapolis Honeywell Regulator Company, 344 U.S. 206 (1952), Honeywell petitioned the Seventh Circuit to review and set aside a three part order of the Federal Trade Commission. The Commission sought enforcement of all three parts of its order by cross-petition. In Seventh Circuit proceedings, Honeywell attacked Part III of the FTC's cease and desist order, abandoning its attack on Parts I and II. Ultimately the Court of

Appeals entered its judgment, reversing Part III of the cease and desist order, while not addressing Parts I and II. After the period for filing a petition for rehearing had expired, the FTC filed a memorandum with the court requesting that formal judgment be entered enforcing Parts I and II of the Commission's cease and desist order. A second judgment was duly entered, acknowledging that Parts I and II of the Commission's cease and desist order were affirmed, and ordering enforcement of those parts of the order.

More than ninety days following the first judgment, but less than ninety days following the second judgment, the Commission filed a petition for certiorari. This court denied that petition as untimely, saying:

> Thus, the mere fact that a judgment previously entered has been reentered or revised in an

> immaterial way does not toll the time within which review must be sought. Only when the lower court changes matter of substance, or resolves a genuine ambiguity, and a judgment previously rendered, should the period within which an appeal must be taken or a petition for certiorari filed begin to run anew. The test is a practical one. The question is whether the lower court, in its second order, has disturbed or revised legal rights and obligations which, by its prior judgment, had been plainly and properly settled with finality.

Federal Trade Commission v. Minneapolis Honeywell Regulator Company, supra, id. at 211.

The court went on to find that it had no jurisdiction to consider the petition for certiorari, employing language equally applicable to the matter now before the court:

> It is a principle reflected in the statutes which limit our appellate jurisdiction to those cases where review is sought within a prescribed period. Those statutes are not to be applied so as to permit a tolling of their time limitations because some event occurred in the lower

> court after judgment was rendered which is of no import to the matters to be dealt with on review. Id. at 213.

Similarly, there can be little question that the action of the Eighth Circuit in issuing a revised order which did nothing more than note that three judges dissented from the order denying rehearing disturbed no legal rights by and between the parties and was of no import to the matters to be dealt with on review. Consequently, no reason exists to determine that the period for filing this petition for writ of certiorari was tolled following the Eighth Circuit's original denial of rehearing. Morse v. United States, 270 U.S. 151 (1926) (time runs from the day when the court denied a timely filed motion for new trial, and was not postponed by the subsequent presentation of a motion (likewise denied) for leave to file a

further motion for a new trial). See also Department of Banking v. Pink, 317 U.S. 264 (1942); Zimmern v. United States, 298 U.S. 167 (1936); Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399 (1923); Federal Power Commission v. Idaho Power Co., 344 U.S. 17 (1952); Rubber Co. v. Goodyear, 73 U.S. 153 (1868).

Petitioners filed their petition for writ of certiorari 97 days after the Court of Appeals denied their petition for rehearing. The petition for a writ was received in this office 100 days following that denial. Since the subsequent order of the Eighth Circuit affects nothing of substance whatsoever, this petition is late and confers no jurisdiction on this court to consider it whatsoever. The petition should be denied.

II. THIS COURT SHOULD NOT GRANT CERTIORARI TO CONSIDER WHETHER THE DISTRICT COURT HAD SUBJECT MATTER JURISDICTION.

Petitioners suggest that this court should grant certiorari to review the question whether the District Court had federal subject matter jurisdiction to adjudicate the case. Respondent submits that this argument is not sufficient grounds to warrant a grant of certiorari and review by this court.

Whether the District Court had jurisdiction to hear this case, while newly important to the petitioners, falls far short of the standards for granting the statutory writ of certiorari. That question involves no conflict between the courts of appeals, presents no important question of state or territorial law, raises nothing in the way of important

issues never addressed by this court, and certainly involves no gross departure from the accepted, usual course of judicial proceedings so as to invoke the jurisdiction of this court. Supreme Court Rule 17.1. To the contrary, even should this court grant certiorari to consider the question of the district court's federal jurisdiction, such an effort by the court would merely correct a technical error. Applicants to this court have, on countless occasions, been reminded that the Supreme Court does not exist to correct technical errors affecting only the private rights of parties or in vindicating individual rights. See, e.g., Idaho Department of Employment v. Smith, 434 U.S. 100 (1977) (Stevens dissent). As stated by Justices Stevens, Brennan and Marshall in Anderson v. Harless, 459 U.S. 4, 12 (1982);

> It is not appropriate for this court to expend its scarce resources crafting opinions that correct technical errors in cases of only local importance, for the correction in no way promotes the development of the law. As echoed by Justice Rehnquist, "In our zeal to provide 'equal justice under the law', we must never forget that this court is not a forum for the correction of errors." (footnote omitted) (quoting Boag v. Mac Dougall, 454 U.S. 364 (1982)).

Since, as here, the court's grant of certiorari can only expend this court's scarce judicial resources in the resolution of a private dispute rather than any matter of public importance,

> . . . it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarassing conflict of opinion and authority between circuit courts of appeal.

Lane & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 393 (1923).

This is especially true where the injury to petitioners, if any, is entirely self-inflicted. This case was originally filed by respondent in the state courts of Minnesota. Petitioners removed the matter to federal district court and opposed respondent's motion to remand to the state courts for lack of federal subject matter jurisdiction. The reason this case even presents any question regarding the presence or absence of federal subject matter jurisdiction is petitioners' vigorous effort to ensure that the matter be heard by the federal courts. Now, however, having lost in the district court and in the court of appeal, petitioners request that the scarce resources of this court be expended in correcting an alleged private, technical injustice which has occurred, if at all, entirely due to the procedural machinations of petitioners.

Under these circumstances, the petition is especially weak and ought to be promptly denied.

Petitioners rely heavily on Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S.1 (1983) to bolster their contention that this court should grant the discretionary writ of certiorari. There, however, this court was obliged to consider the matter of subject matter jurisdiction since Franchise Tax Board came to the Supreme Court on appeal rather than certiorari. Here, the precise issue before the court is whether certiorari should be granted to review a procedural controversy which is of no general importance whatsoever and which arises only because of the NRA's successful efforts to remand this case to the federal courts. Obviously, if this matter came to this court on appeal as of

right, the issue would be reviewed substantively. In this posture, however, it is respectfully submitted that certiorari need not be granted to attend the NRA's self-inflicted wounds.

III. THE COURT OF APPEALS DECISION IS CONSISTENT WITH BUCKLEY v. VALEO, 519 F.2d 821 (D.C. Cir. 1975).

Petitioners contend that the Eighth Circuit's decision in the instant case conflicts with Buckley v. Valeo, 519 F.2d 821 (D.C. Cir. 1975). Allegedly, the Buckley court's holding that Section 473a of the Federal Election Campaign Act was unconstitutional conflicts with the Eighth Circuit's decision upholding the Minnesota Ethics in Government Act.

If anything, the D.C. Circuit decision supports the position of respondents. Both the Court of Appeals for the District

of Columbia and this court in Buckley v. Valeo, 424 U.S. 1 (1976) upheld those requirements of the federal act requiring the disclosure of PAC activities and the identity of contributors beyond a certain monetary threshold. In fact, the Minnesota act, modeled on the federal act, depends on this court's ruling in Buckley to support its constitutionality.

Section 437a of the federal act provides that:

> Any person, other than an individual, who expends any funds or commits any act directed to the public for the purpose of affecting the outcome of an election, or who publishes or broadcasts to the public any material referring to a candidate . . . advocating the election or defeat of such candidate . . . shall file reports with the Commission as if such person were a political committee. The reports filed by such person shall set forth the source of funds used in carrying out any activity . . . in the same detail as if the funds were contributions . . . 2 U.S.C. 437(a) (1985).

As interpreted by the D.C. Circuit,

> Dissecting the statutory language, it is seen that Section 473a's demand for disclosure is activated --without any "expending of any funds whatever" -- (i) by "any act directed to the public for the purpose of influencing the outcome of an election"; or (ii) by "any material" "published or broadcast to the public" which refers to a candidate (by name, description or other reference)" and which (a) "advocates the election or defeat of such candidate" or (b) "sets forth the candidate's position on any public issue, his voting record or other official acts (in the case of a candidate who holds or has held federal office) and ("or (c) is "otherwise designed to influence officials to cast their votes for or against such candidate or to withhold their votes from such candidate." Notwithstanding the exemption of such activities, . . . the scope of Section 437a is potentially expansive. Buckley v. Valeo, supra, id. at 870.

The constitutional flaw found in this section by the D. C. Circuit was its potential application to "groups whose only connection with the elective process arises from completely nonpartisan public

discussion of issues of public importance". Id. at 870. As noted by the court:

> We might add to the list of publications potentially affected by such comment, trade and professional journals, campus newspapers, union newsletters and even church bulletins, among a host of others. Indeed, every little Audubon society chapter [might be intercepted for 'environment' as an issue in one campaign or another. On this basis, too, a Boy Scout troop advertising for membership to combat 'juvenile delinquency' or a golden age club promoting 'senior citizens' rights' might] "fall under the act". Id. at 871.

The appeals court had no trouble distinguishing such groups from those which constitutionally can be obliged to report and disclose their political activities.

> It is well established that compelled disclosure of the kind of information section 437a exacts can work a substantial infringement of the associational rights of those whose organizations take public stands on public issues. E.G. NAACP v. Alabama ex rel. Patterson, 357

> U.S. 449, 462, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958); Bates v. Little Rock, 361 U.S. 516, 522-524, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960). To say this is not to denigrate our action upholding the Act's disclosure requirements applicable to "political committees" and to "contributions" and "expenditures" as those terms are defined therein. We have sustained those provisions although compliance with them may impose a burden that is more than trivial, and may portend a deterrence that arouses some concern. Our holdings supporting the Act's central disclosure requirements are grounded on our recognition that the government has demonstrated a substantial and legitimate interest in protecting the integrity of its elections, an interest closely connected to and plainly advanced by those provisions.
>
> Section 437a, however, seeks to impose the same demands where the nexus may be far more tenuous. As we have said, it may undertake to compel disclosure by groups that do no more than discuss issues of public interest on a wholly non-partisan basis. Buckley v. Valeo, supra, id. at 872.

Based on the potential reach of Section 473a, the appeals court held it unconstitutionally vague and overbroad.

In so doing, the Court of Appeals refused to adopt a narrow construction of the statutory phrase "purpose of influencing the outcome of an election" to avoid affecting purely issue discussion groups.

This ruling in no way conflicts with the Eighth Circuit ruling on the Minnesota statutes. The Minnesota law requires reporting and registration by political funds which are defined as "any accumulation of dues or voluntary contributions . . . which is collected or expended for the purpose of influencing the nomination or election of a candidate." Minn. Stat. §10A.01 (16) (1984).

The Minnesota law, unlike Section 437a of the federal law, then, specifically requires the expenditure of funds for the specific purpose of influencing an election, thereby failing to reach the

public discussion groups which concerned the D. C. Court of Appeals. In fact, the Minnesota "political fund" reporting and disclosure requirements closely resemble the federal requirements for political committees which are expressly upheld against constitutional attack without serious question by both the D. C. Court of Appeals and this court.

Far from presenting a question involving a conflict among the Courts of Appeals, this case presents "issues" already ruled upon by this Court in the definitive case of Buckley v. Valeo. The reporting and disclosure requirements there, practically identical to those adopted by Minnesota, were found fully constitutional. Petitioners have made no claim of harassment or discrimination which concededly might be the basis for an exemption from the requirement, as noted

by this court in Buckley. Absent such a claim, the associational arguments raised by petitioners are neither controversial nor doubtful, and make no compelling case for a grant of a writ of certiorari. Indeed, for petitioners, which mounted determined and militant efforts to defeat a particular state candidate on the basis of single issue politics, to cite the D. C. Circuit's concern for the Audubon Society as a conflict among the circuits, demonstrates how meagre the grounds are for granting certiorari in this case. Unless the National Rifle Association intends to masquerade as a public interest discussion group with no particular political agenda, the court of appeals' Buckley decision is of no benefit to them, and adds nothing to this petition for certiorari.

CONCLUSION

The petition not having been timely filed, should not be considered by the Court. The ninety days provided for the petition is "more than ample . . . to determine whether to seek further review". Commissioner of Internal Revenue v. Estate of Bedford, et al., 325 U.S. 283, 288 (1945). And, this Court has made clear that petitions are not saved by the issuance of a second Eighth Circuit order denying rehearing given the complete lack of substance to that action.

Beyond the untimely filing of their petition, no adequate grounds exist for granting the petition. If the district court in fact lacked subject matter jurisdiction, that is a matter of no general importance and a problem which is entirely caused by petitioners themselves.

To grant this petition, then, this court must first excuse the failure of petitioner to timely approach this Court, and then conclude that the offices of the Supreme Court of the United States should be mustered to save the National Rifle Association from an eminently sensible and equitable judgment on the most technical of grounds where the technical flaw, if any, was an entirely self-inflicted wound. Under these circumstances, the petition should, it is respectfully submitted, be promptly denied.

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UNITED STATES COURT
OF APPEALS
For the Eighth Circuit

No. 84-5101-MN

Minnesota State Ethical Practices Board,	*	
Appellee,	*	
vs.	*	Appeal from the United States District Court for the District of Minnesota
The National Rifle Association of America, et al.,	*	
Appellants.	*	

Appellants' petition for rehearing en blanc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

August 9, 1985

Supreme Court, U.S.
FILED
JAN 13 1986
JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 85-824

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

THE NATIONAL RIFLE ASSOCIATION OF AMERICA, NEAL KNOX, WILLIAM B. BINSWANGER, WARREN CASSIDY, THE NATIONAL RIFLE ASSOCIATION POLITICAL VICTORY FUND, AND MICHAEL K. MCCABE,

Petitioners,

v.

MINNESOTA STATE ETHICAL PRACTICES BOARD

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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REPLY TO OPPOSITION TO PETITION FOR CERTIORARI

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REPLY TO OPPOSITION TO PETITION FOR CERTIORARI

FACTS

In its Opposition to NRA's petition, Respondent accuses the NRA of having "trivialized" (Opposition, at 3) its electioneering activities in Minnesota and, in what Respondent seemingly views as an attempt to balance the picture, discusses facts concerning the activities of the National Rifle Association Political Victory Fund which

were not before the Court of Appeals and are not at issue in this case. See, Opposition, at 5-6. Such an effort by Respondent is clearly an attempt on Respondent's part to emotionalize and unnecessarily politicize this case.

I. THE PETITION FOR A WRIT OF CERTIORARI WAS TIMELY FILED

Supreme Court Rule 20.4 states in part, "if a petition for rehearing is timely filed by any party in the case, the time for filing the petition for writ of certiorari . . . runs from the date of the denial of rehearing . . ." In this case, the Eighth Circuit, *sua sponte*, issued what it characterized as an "amended order" on August 16, 1985, since its order of August 9, 1985 failed to indicate that three judges dissented from the order denying rehearing. It is thus plain that the Court of Appeals viewed the additional information included in the August 16, 1985 order as significant.

As this Court held *Rubber Company v. Goodyear*, 6 Wall. 153 (1868) (subsequent order of lower court incorporating language of prior order was order from which time for appeal should be calculated), "we must be governed by the obvious intent of the Circuit Court, apparent on the face of the proceedings." 6 Wall. at 155-6. It is thus not for Respondent unilaterally to characterize the Court of Appeals' action as one of "no import" (Opposition, at 14) and, therefore, as an action which did not extend the period for filing this petition. Notably, in *Rubber Company*, this Court found that the date from which the appeal was to be taken was the date of the subsequent order, notwithstanding that the subsequent order—unlike the "amended order" in the instant case which made no reference to the earlier order—expressly stated that it was entered " 'as of' " (6 Wall. at 156) the earlier date.

In the case primarily relied upon by Respondent to support its contention that August 9, 1985, not August

16, 1985, was the date from which the time to file a petition began to run, this Court did not disturb the holding in *Rubber Company*. Indeed, as is clear from the facts in *F.T.C. v. Minneapolis-Honeywell*, 344 U.S. 206 (1952), this Court affirmed the principle of *Rubber Company*—that the intent of the lower court should govern—when it concluded that the F.T.C.'s petition for a writ of certiorari should be dismissed. As this Court recognized, the Court of Appeals in *Minneapolis-Honeywell* knew, when it issued its subsequent decision of September 18, 1951, that "there was no contest over" (344 U.S. at 210) Parts I and II of the F.T.C.'s order and that the F.T.C. had not petitioned the Court of Appeals for a rehearing of its decision of July 5, 1951 reviewing only Part III of the F.T.C.'s order. Thus, the Court of Appeals certainly did not intend, with regard to Part I and II of the F.T.C.'s order, its September 18, 1951 order to revise its earlier decision. Indeed, given that the Court of Appeals' July 5, 1951 decision took no action as to Parts I and II of the F.T.C.'s order, there was nothing which the September 18, 1951 order could revise. By contrast, in the instant case, the Court of Appeals, *sua sponte*, having undoubtedly seen that its August 9, 1985 order was inaccurate and incomplete and might possibly affect this Court's decision to review the Court of Appeals' opinion relating to fundamental constitutional guarantees, promptly superseded its August 9, 1985 order.[1]

In determining whether the time for filing the petition in this case commenced running as of the Court of Appeals' order of August 9, 1985 or its amended order of August 16, 1985, this Court should take into account the fact that, unlike the cases relied upon by Respondent—which involved only questions of statutory construction—core First Amendment rights are at stake in the instant

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[1] That the Court of Appeals had the power to supersede its earlier order was made clear by this Court in *Minneapolis-Honeywell*. See, 344 U.S. at 211.

case;[2] thus, given that NRA's filing of its petition ninety (90) days after the Court of Appeals' amended order was, at worst, a good faith error by which Respondent was in no way prejudiced nor by which this Court was inconvenienced, this Court should not too narrowly construe Rule 20.4 and should conclude that NRA's petition was timely filed.

II. THE LOWER COURTS LACKED SUBJECT MATTER JURISDICTION

Respondent portrays NRA's assertion that the lower courts lacked subject matter jurisdiction as asking this Court to correct a "technical error." Opposition, at 17. Subject matter jurisdiction is not, however, merely a "technical" matter; rather, "[t]he validity of an order of a federal court depends upon the court's having jurisdiction over both the subject matter and the parties." *Insurance Corp. v. Compagnie Des Bauxites*, 456 U.S. 694, 701 (1982). Indeed, "[s]ubject-matter jurisdiction . . . is an Art. III as well as a statutory requirement." 456 U.S. at 702. Consequently, this Court has emphatically held that the rule requiring federal courts to deny their jurisdiction where subject matter jurisdiction does not exist "is inflexible and without exception . . . [It] requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record." *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884).

Notably, Respondent *does not dispute* that subject-matter jurisdiction is lacking in this case. Rather, the

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[2] It should also be noted that NRA contends—a contention which Respondent does not dispute—that the lower courts lacked subject matter jurisdiction over the case; consequently, at the very least, this Court should grant a writ of certiorari to vacate the lower court's decision.

MEPB contends only that NRA should not be allowed to complain about the absence of subject-matter jurisdiction as it was NRA which originally moved the case to federal court. This contention is wholly insufficient, however, since, as this Court stated in *Insurance Corp.*, "[*no*] *action of the parties* can confer subject matter jurisdiction upon a federal court." (emphasis added) 456 U.S. at 702. Moreover, NRA is not estopped from challenging subject-matter jurisdiction even though NRA was responsible for removing the case to the federal court. *Ibid.*

III. A CONFLICT EXISTS BETWEEN CIRCUITS

A) Respondent's discussion (at page 22 of its Opposition) of the holding in *Buckley v. Valeo*, 424 U.S. 1 (1976) is not relevant to the issues before this Court in the instant case. In *Buckley*, this Court upheld disclosure requirements as they pertained to political committees[8] that had contributed directly to a candidate or that had spent money in coordination with a candidate's campaign. Three compelling governmental interests for th disclosure requirement were cited: provision of information as to where a candidate's money comes from and how it is spent; deterrence of corruption; and detection of contribution limitation violations. As the NRA explained in its Petition, these governmental interests are not served by disclosure in the circumstances of this case.

B) Respondent's presentation of the Court of Appeals' discussion of § 437a of the Federal Election Campaign

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[8] The provision of Minnesota law which is "modeled on the federal act" (Opposition, at 22) is the "political committee" provision of Minnesota law (Minn. Stat. 10A.01 (15)), *not* the "political fund" provision (Minn. Stat. 10A.01 (16)) as suggested by Respondent.

Act[4] in *Buckley v. Valeo*, 519 F.2d 817 (D.C. Cir. 1975) is misleading. While it is true that the Court of Appeals in *Buckley* was concerned with the potential application of § 437a "to 'groups whose only connection with the elective process arises from completely nonpartisan public discussion of issues of public importance' *Id.* at 870" (Opposition at page 23), this was *not* the only set of circumstances to which the Court of Appeals found potential application of § 437a to be offensive. A careful reading of the Court of Appeals' decision reveals that the Court of Appeals was also concerned about the impact of § 437a on *partisan* activities involving the exercise of First Amendment rights where no direct contributions were involved. This is made clear by the Court of Appeals' discussion of the potential application of § 437a to *Human Events* and the *ACLU*. *Buckley*, 519 F.2d at 870, 871, 872. Thus, the distinction drawn by the Court of Appeals was not—as urged by Respondent's statement that the Court of Appeals "had no trouble distinguishing such groups from those which constitutionally can be obliged to report and disclose their political activities" (Opposition, at 24)— between organizations engaged in partisan discussion of political issues and organizations engaged in nonpartisan discussion of political issues but rather was between organizations which discussed political issues and those which contributed money to candidates or spent money in coordination with candidates. Indeed, the extensive quotation from the Court of Appeals' *Buckley* decision cited by Respondent (Opposition, at 24-25) makes this plain beyond any doubt.

The conflict between the Eighth Circuit decision in the instant case and the D.C. Circuit's decision in *Buckley*

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[4] This section of the Federal Election Campaign Act of 1971, as amended, was repealed, Pub. L. 94-283, Title I, § 105, 90 Stat. 481, subsequent to the Court of Appeals' decision in *Buckley*.

is also manifest from the D.C. Circuit's discussion of the legislative history of § 437a. The legislative history of § 437a reveals that there was disagreement among the members of the conference committee concerning the breadth of § 437a. *Buckley*, 519 F.2d at 877, n. 140. Representative Frenzel voiced objection to the lack of an express exemption for membership organizations when communicating with members in § 437a; Senator Cannon and Representative Hays answered this objection by stating that § 437a was intended to be limited to those occasions when such organizations communicated with the general public. In making such statements, they plainly attempted to sustain the constitutionality of § 437a by creating an implicit exemption for those instances when organizations communicated only with their members. *Buckley*, 519 F.2d at 877, n. 140.

The Court of Appeals, however, accepted Representative Frenzel's interpretation of § 437a (*Buckley*, 519 F.2d at 877, n.141), that is, that § 437a could "apply indiscriminately and will bring under the disclosure provisions many groups, including liberal, labor, environmental, business and conservative organizations." *Buckley*, 519 F.2d at 877, n. 140. The Court of Appeals was thus able to conclude that § 437a was unconstitutional.[6]

Moreover, if § 437a could have been sustained by reading it not to apply to membership organizations when communicating with their members, then Minn. Stat. 10A.01(16), which has not been read to include to such an implicit exemption, cannot be saved.

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[6] The Court of Appeals clearly did not "refuse[] to adopt a narrow construction of the statutory phrase 'purpose of influencing the outcome of an election' to avoid affecting purely issue discussion groups." Opposition, at 26. In fact, the Court of Appeals adopted a reading of § 437a which was "the narrowest interpretation feasible" (519 F.2d at 874), but still held § 437a unconstitutional.

C) Respondent asserts that the Minn. Stat. 10A.01(16) is unlike § 437a as it "specifically requires the expenditure of funds for the specific purpose of influencing an election . . ." Opposition, at 26. This is incorrect. Minn. Stat. 10A.01(16) defines a political fund as "any accumulation of dues . . . which accumulation is collected *or* expended for the purpose of influencing the nomination or election of a candidate . . . (emphasis added). There is no requirement that the funds be expended before the reporting requirements of Minn. Stat. 10A.12 are triggered. Moreover, even if this statement were true, it would be further reason to hold § 10A.01(16) unconstitutionally overbroad as there is no compelling governmental interest to uphold its application to the facts of this case.[6]

Respondent also states that the "Minnesota 'political fund' reporting and disclosure requirements *closely resemble* the federal requirements for political committees which were expressly upheld against constitutional attack. . . ." (emphasis added) Opposition, at 27. While this may be true, it is wholly inapposite to the instant case since no "political committee" is involved in this case; thus, none of the rationales for upholding the disclosure requirements for political committees exist. Moreover, when applied to membership organizations communicating solely to their membership, the rationale for upholding the reporting and disclosure requirements is no longer valid. As outlined in this Court's opinion in *Buckley*, 424 U.S. at 67-68, that applies only when the influence is in the form of direct contributions to candidates and/or their committees.

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[6] Plainly, since NRA "mounted determined and militant efforts *to defeat* a particular state candidate" (emphasis added) (Opposition, at 28), there was no opportunity for corruption; thus, there is no compelling governmental interest for applying § 10A.01(16) to the NRA's activities in this case.

CONCLUSION

For the reasons set forth herein and in the Petition, this Court should grant a Writ of Certiorari.

Respectfully submitted,

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